



# Environment Act 1995

## 1995 CHAPTER 25

### PART V

#### MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS

##### *Waste*

#### **92 National waste strategy.**

- (1) Before section 45 of the <sup>M1</sup>Environmental Protection Act 1990 there shall be inserted—

**“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

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- (iii) any special requirements for particular wastes.
- (5) In preparing the strategy or any modification of it, the Secretary of State—
- (a) shall consult the Environment Agency,
  - (b) shall consult—
    - (i) such bodies or persons appearing to him to be representative of the interests of local government, and
    - (ii) such bodies or persons appearing to him to be representative of the interests of industry,
 as he may consider appropriate, and
  - (c) may consult such other bodies or persons as he considers appropriate.
- (6) Without prejudice to any power to give directions conferred by section 40 of the Environment Act 1995, the Secretary of State may give directions to the Environment Agency requiring it—
- (a) to advise him on the policies which are to be included in the strategy;
  - (b) to carry out a survey of or investigation into—
    - (i) the kinds or quantities of waste which it appears to that Agency is likely to be situated in England and Wales,
    - (ii) the facilities which are or appear to that Agency likely to be available or needed in England and Wales for recovering or disposing of any such waste,
    - (iii) any other matter upon which the Secretary of State wishes to be informed in connection with his preparation of the strategy or any modification of it,
 and to report its findings to him.
- (7) A direction under subsection (6)(b) above—
- (a) shall specify or describe the matters or the areas which are to be the subject of the survey or investigation; and
  - (b) may make provision in relation to the manner in which—
    - (i) the survey or investigation is to be carried out, or
    - (ii) the findings are to be reported or made available to other persons.
- (8) Where a direction is given under subsection (6)(b) above, the Environment Agency shall, in accordance with any requirement of the direction,—
- (a) before carrying out the survey or investigation, consult—
    - (i) such bodies or persons appearing to it to be representative of local planning authorities, and
    - (ii) such bodies or persons appearing to it to be representative of the interests of industry,
 as it may consider appropriate; and
  - (b) make its findings available to those authorities.
- (9) In this section—
- “local planning authority” has the same meaning as in the <sup>M2</sup>Town and Country Planning Act 1990;
- “strategy” includes the strategy as modified from time to time and
- “statement” shall be construed accordingly.

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- (10) This section makes provision for the purpose of implementing Article 7 of the <sup>M3</sup>directive of the Council of the European Communities, dated 15th July 1975, on waste, as amended by—
- (a) the <sup>M4</sup>directive of that Council, dated 18th March 1991, amending directive [75/442/EEC](#) on waste; and
  - (b) the <sup>M5</sup>directive of that Council, dated 23rd December 1991, standardising and rationalising reports on the implementation of certain Directives relating to the environment.

#### 44B National waste strategy: Scotland.

- (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,
    - (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—

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- (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 <sup>M6</sup>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 <sup>M7</sup>directive of the Council of the European Communities dated 15th July 1975 on waste, as amended by—
- (a) the <sup>M8</sup>directive of that Council dated 18th March 1991 amending directive [75/442/EEC](#) on waste; and
  - (b) the <sup>M9</sup>directive of that Council dated 23rd December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment.”
- (2) After Schedule 2 to that Act there shall be inserted the Schedule set out in Schedule 12 to this Act.

#### Marginal Citations

<b>M1</b>	<a href="#">1990 c. 43.</a>
<b>M2</b>	<a href="#">1990 c. 8.</a>
<b>M3</b>	<a href="#">91/692/EEC.</a>
<b>M4</b>	<a href="#">91/156/EEC.</a>
<b>M5</b>	<a href="#">75/442/EEC.</a>
<b>M6</b>	<a href="#">1973 c. 65.</a>
<b>M7</b>	<a href="#">91/692/EEC.</a>
<b>M8</b>	<a href="#">91/156/EEC.</a>
<b>M9</b>	<a href="#">75/442/EEC.</a>

### 93 Producer responsibility: general.

- (1) For the purpose of promoting or securing an increase in the re-use, recovery or recycling of products or materials, the Secretary of State may by regulations make provision for imposing producer responsibility obligations on such persons, and in respect of such products or materials, as may be prescribed.

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- (2) The power of the Secretary of State to make regulations shall be exercisable only after consultation with bodies or persons appearing to him to be representative of bodies or persons whose interests are, or are likely to be, substantially affected by the regulations which he proposes to make.
- (3) Except in the case of regulations for the implementation of—
- (a) any obligations of the United Kingdom under the [F1EU] Treaties, or
  - (b) any international agreement to which the United Kingdom is for the time being a party,
- the power to make regulations shall be exercisable only where the Secretary of State, after such consultation as is required by subsection (2) above, is satisfied as to the matters specified in subsection (6) below.
- (4) The powers conferred by subsection (1) above shall also be exercisable, in a case falling within paragraph (a) or (b) of subsection (3) above, for the purpose of sustaining at least a minimum level of (rather than promoting or securing an increase in) re-use, recovery or recycling of products or materials.
- (5) In making regulations by virtue of paragraph (a) or (b) of subsection (3) above, the Secretary of State shall have regard to the matters specified in subsection (6) below; and in its application in relation to the power conferred by virtue of subsection (4) above, subsection (6) below shall have effect as if—
- (a) any reference to an increase in the re-use, recovery or recycling of products or materials were a reference to the sustaining of at least a minimum level of re-use, recovery or recycling of the products or materials in question, and
  - (b) any reference to the production of environmental or economic benefits included a reference to the sustaining of at least a minimum level of any such existing benefits,
- and any reference in this section or section 94 below to securing or achieving any such benefits shall accordingly include a reference to sustaining at least a minimum level of any such existing benefits.
- (6) The matters mentioned in subsections (3) and (5) above are—
- (a) that the proposed exercise of the power would be likely to result in an increase in the re-use, recovery or recycling of the products or materials in question;
  - (b) that any such increase would produce environmental or economic benefits;
  - (c) that those benefits are significant as against the likely costs resulting from the imposition of the proposed producer responsibility obligation;
  - (d) that the burdens imposed on businesses by the regulations are the minimum necessary to secure those benefits; and
  - (e) that those burdens are imposed on persons most able to make a contribution to the achievement of the relevant targets—
    - (i) having regard to the desirability of acting fairly between persons who manufacture, process, distribute or supply products or materials; and
    - (ii) taking account of the need to ensure that the proposed producer responsibility obligation is so framed as to be effective in achieving the purposes for which it is to be imposed;
- but nothing in sub-paragraph (i) of paragraph (e) above shall be taken to prevent regulations imposing a producer responsibility obligation on any class or description of person to the exclusion of any others.

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- (7) The Secretary of State shall have a duty to exercise the power to make regulations in the manner which he considers best calculated to secure that the exercise does not have the effect of restricting, distorting or preventing competition or, if it is likely to have any such effect, that the effect is no greater than is necessary for achieving the environmental or economic benefits mentioned in subsection (6) above.
- (8) In this section—
- “prescribed” means prescribed in regulations;
  - “product” and “material” include a reference to any product or material (as the case may be) at a time when it becomes, or has become, waste;
  - “producer responsibility obligation” means the steps which are required to be taken by relevant persons of the classes or descriptions to which the regulations in question apply in order to secure attainment of the targets specified or described in the regulations;
  - “recovery”, in relation to products or materials, includes—
    - (a) composting, or any other form of transformation by biological processes, of products or materials; or
    - (b) the obtaining, by any means, of energy from products or materials;
  - “regulations” means regulations under this section;
  - “relevant persons”, in the case of any regulations or any producer responsibility obligation, means persons of the class or description to which the producer responsibility obligation imposed by the regulations applies;
  - “relevant targets” means the targets specified or described in the regulations imposing the producer responsibility obligation in question;
- and regulations may prescribe, in relation to prescribed products or materials, activities, or the activities, which are to be regarded for the purposes of this section and sections 94 and 95 below or any regulations as re-use, recovery or recycling of those products or materials.
- (9) The power to make regulations shall be exercisable by statutory instrument.
- (10) Subject to the following provisions of this section, a statutory instrument containing regulations shall not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.
- (11) Subsection (10) above shall not apply to a statutory instrument by reason only that it contains regulations varying any relevant targets.
- (12) A statutory instrument which, by virtue of subsection (11) above, is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### **Textual Amendments**

- F1** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

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## 94 **Producer responsibility: supplementary provisions.**

- (1) Without prejudice to the generality of section 93 above, regulations may, in particular, make provision for or with respect to—
- (a) the classes or descriptions of person to whom the producer responsibility obligation imposed by the regulations applies;
  - (b) the classes or descriptions of products or materials in respect of which the obligation applies;
  - (c) the targets which are to be achieved with respect to the proportion (whether by weight, volume or otherwise) of the products or materials in question which are to be re-used, recovered or recycled, whether generally or in any prescribed way;
  - (d) particulars of the obligation imposed by the regulations;
  - (e) the registration of persons who are subject to a producer responsibility obligation and who are not members of registered exemption schemes, the imposition of requirements in connection with such registration, the variation of such requirements, the making of applications for such registration, the period for which any such registration is to remain in force and the cancellation of any such registration;
  - (f) the approval, or withdrawal of approval, of exemption schemes by the Secretary of State;
  - (g) the imposition of requirements on persons who are not members of registered exemption schemes to furnish certificates of compliance to the appropriate Agency;
  - (h) the approval of persons by the appropriate Agency for the purpose of issuing certificates of compliance;
  - (j) the registration of exemption schemes, the imposition of conditions in connection with such registration, the variation of such conditions, the making of applications for such registration and the period for which any such registration is to remain in force;
  - (k) the requirements which must be fulfilled, and the criteria which must be met, before an exemption scheme may be registered;
  - (l) the powers of the appropriate Agency in relation to applications received by it for registration of exemption schemes;
  - (m) the cancellation of the registration of an exemption scheme;
  - <sup>F2</sup>(n) .....
  - <sup>F3</sup>(o) .....
  - <sup>F4</sup>(oa) .....
  - (p) the fees, or the method of determining the fees, which are to be paid to the appropriate Agency—
    - (i) in respect of the approval of persons for the purpose of issuing certificates of compliance;
    - (ii) on the making of an application for registration of an exemption scheme;
    - (iii) in respect of the subsistence of the registration of that scheme;
    - (iv) on submission to the appropriate Agency of a certificate of compliance;
    - (v) on the making of an application for, or for the renewal of, registration of a person required to register under the regulations;

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- (vi) in respect of the renewal of the registration of that person;
  - (q) appeals against the refusal of registration, the imposition of conditions in connection with registration, or the cancellation of the registration, of any exemption scheme;
  - (r) the procedure on any such appeal;
  - (s) cases, or classes of case,—
    - (i) in which an exemption scheme is, or is not, to be treated as registered, or
    - (ii) in which a person is, or is not, to be treated as a member of a registered exemption scheme,
 pending the determination or withdrawal of an appeal, and otherwise with respect to the position of persons and exemption schemes pending such determination or withdrawal;
  - (t) the imposition on the appropriate Agency of a duty to monitor compliance with any of the obligations imposed by the regulations;
  - (u) the imposition on prescribed persons of duties to maintain records, and furnish to the Secretary of State or to the appropriate Agency returns, in such form as may be prescribed of such information as may be prescribed for any purposes of, or for any purposes connected with, or related to, sections 93 to 95 of this Act or any regulations;
  - (w) the imposition on the appropriate Agency of a duty to maintain, and make available for inspection by the public, a register containing prescribed information relating to registered exemption schemes or persons required to register under the regulations;
  - (y) the powers of entry and inspection which are exercisable by a new Agency for the purposes of its functions under the regulations;
  - <sup>F5</sup>(ya) .....
- (2) If it appears to the Secretary of State—
- (a) that any action proposed to be taken by the operator of a registered exemption scheme would be incompatible with—
    - (i) any obligations of the United Kingdom under the [<sup>F1</sup>EU] Treaties, or
    - (ii) any international agreement to which the United Kingdom is for the time being a party, or
  - (b) that any action which the operator of such a scheme has power to take is required for the purpose of implementing any such obligations or agreement, he may direct that operator not to take or, as the case may be, to take the action in question.
- (3) Regulations may make provision as to which of the new Agencies is the appropriate Agency for the purposes of any function conferred or imposed by or under this section or section 93 above, or for the purposes of the exercise of that function in relation to the whole or a prescribed part of Great Britain, and may make provision for things done or omitted to be done by [<sup>F6</sup>a new Agency] in relation to any part of Great Britain to be treated for prescribed purposes as done or omitted to be done by [<sup>F7</sup>any other of them] in relation to some other part of Great Britain.
- (4) Persons issuing certificates of compliance shall act in accordance with guidance issued for the purpose by the appropriate Agency, which may include guidance as to matters which are, or are not, to be treated as evidence of compliance or as evidence of non-compliance.



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(5) In making any provision in relation to fees, regard shall be had to the desirability of securing that the fees received by each new Agency under the regulations are sufficient to meet the costs and expenses incurred by that Agency in the performance of its functions under the regulations.

(6) In this section—

“the appropriate Agency”, subject to regulations made by virtue of subsection (3) above, means—

(a) in relation to England <sup>F8</sup>..., the Agency;

(aa) [<sup>F9</sup>in relation to Wales, the Natural Resources Body for Wales;]

(b) in relation to Scotland, SEPA;

“certificate of compliance” means a certificate issued by a person approved for the purpose by the appropriate Agency to the effect that that person is satisfied that the person in respect of whom the certificate is issued is complying with any producer responsibility obligation to which he is subject;

<sup>F10</sup>  
...

“exemption scheme” means a scheme which is (or, if it were to be registered in accordance with the regulations, would be) a scheme whose members for the time being are, by virtue of the regulations and their membership of that scheme, exempt from the requirement to comply with the producer responsibility obligation imposed by the regulations;

“new Agency” means the Agency [<sup>F11</sup>, the Natural Resources Body for Wales or SEPA];

“operator”, in relation to an exemption scheme, includes any person responsible for establishing, maintaining or managing the scheme;

“registered exemption scheme” means an exemption scheme which is registered pursuant to regulations;

and expressions used in this section and in section 93 above have the same meaning in this section as they have in that section.

<sup>F12</sup>( 6A) .....

(7) Regulations—

(a) may make different provision for different cases;

(b) without prejudice to the generality of paragraph (a) above, may impose different producer responsibility obligations in respect of different classes or descriptions of products or materials and for different classes or descriptions of person or exemption scheme;

(c) may include incidental, consequential, supplemental or transitional provision.

(8) Any direction under this section—

(a) may include such incidental, consequential, supplemental or transitional provision as the Secretary of State considers necessary or expedient; and

(b) shall, on the application of the Secretary of State, be enforceable by injunction or, in Scotland, by interdict or by an order for specific performance under section 45 of the <sup>M10</sup>Court of Session Act 1988.

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### Textual Amendments

- F1** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))
- F2** S. 94(1)(n) ceases to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 2 para. 7\(2\)\(a\)](#) (with reg. 6(2))
- F3** S. 94(1)(o) repealed (1.3.2000) by [S.I. 2000/311](#), [art. 28\(1\)\(2\)](#)
- F4** S. 94(1)(oa) ceases to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 2 para. 7\(2\)\(a\)](#) (with reg. 6(2))
- F5** S. 94(1)(ya) ceases to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 2 para. 7\(2\)\(a\)](#) (with reg. 6(2))
- F6** Words in s. 94(3) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 381\(2\)\(a\)](#) (with Sch. 7)
- F7** Words in s. 94(3) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 381\(2\)\(b\)](#) (with Sch. 7)
- F8** Words in s. 94(6) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 381\(3\)\(a\)\(i\)](#) (with Sch. 7)
- F9** Words in s. 94(6) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 381\(3\)\(a\)\(ii\)](#) (with Sch. 7)
- F10** Words in s. 94(6) cease to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 2 para. 7\(2\)\(b\)](#) (with reg. 6(2))
- F11** Words in s. 94(6) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 381\(3\)\(b\)](#) (with Sch. 7)
- F12** S. 94(6A) ceases to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 2 para. 7\(2\)\(c\)](#) (with reg. 6(2))

### Marginal Citations

- M10** 1988 c. 36.

## <sup>F13</sup> 94A Producer responsibility: competition matters.

.....

### Textual Amendments

- F13** S. 94A ceases to have effect (1.5.2004) by virtue of [The Competition Act 1998 and Other Enactments \(Amendment\) Regulations 2004 \(S.I. 2004/1261\)](#), reg. 1(a), [Sch. 2 para. 7\(3\)](#) (with reg. 6(2))

## 95 Producer responsibility: offences.

- (1) Regulations may make provision for a person who contravenes a prescribed requirement of the regulations to be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

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- (2) Where an offence under any provision of the regulations 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.
- (3) Where the affairs of a body corporate are managed by its members, subsection (2) 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.
- (4) Where the commission by any person of an offence under the regulations 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 this section whether or not proceedings for the offence are taken against the first-mentioned person.
- (5) Expressions used in this section and in section 93 or 94 above have the same meaning in this section as they have in that section.

#### **[<sup>F14</sup>96 Mineral planning permissions**

- (1) Schedules 13 and 14 to this Act shall have effect.
- (2) This section, those Schedules [<sup>F15</sup>as they apply to England and Wales], and the 1990 Act shall have effect as if this section and those Schedules [<sup>F15</sup>(as so applying)] were included in Part III of that Act.  
[ This section, those Schedules as they apply to Scotland, and the 1972 Act shall have <sup>F16</sup>(3) effect as if this section and those Schedules (as so applying) were included in Part III of that Act.]
- (4) Section 105 of the 1990 Act [<sup>F17</sup>and section 251A of the 1972 Act] shall cease to have effect.
- (5) Without prejudice to the generality of sections 59 to 61 of the 1990 Act [<sup>F17</sup>or, as the case may be, section 21 of the 1972 Act], a development order may make, in relation to any planning permission which is granted by a development order for minerals development, provision similar to any provision made by Schedule 13 or 14 to this Act.
- (6) In this section and those Schedules—  
    [<sup>F18</sup>“the 1972 Act” means the <sup>M11</sup>Town and Country Planning (Scotland) Act 1972;]  
    “the 1990 Act” means the <sup>M12</sup>Town and Country Planning Act 1990;  
    “the 1991 Act” means the <sup>M13</sup>Planning and Compensation Act 1991; and  
    “minerals development” means development consisting of the winning and working of minerals, or involving the depositing of mineral waste.]

#### **Textual Amendments**

**F14** S. 96 repealed (S.) (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. II** (with s. 5, Sch. 3)

**F15** Words in s. 96(2) repealed (E.W.) (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. III** (with s. 5, Sch. 3)

**F16** S. 96(3) repealed (E.W.) (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. III** (with s. 5, Sch. 3)

*Status: Point in time view as at 01/04/2019.*

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- F17** Words in s. 96(4)(5) repealed (E.W.) (27.5.1997) by 1995 c. 25, ss. 3, 6(2), **Sch. 1 Pt. III** (with s. 5, Sch. 3)
- F18** Definition of “the 1972 Act” in s. 96(6) repealed (E.W.) (27.5.1997) by 1997 c. 11, ss. 3, 6(2), **Sch. 1 Pt. III** (with s. 5, Sch. 3)

#### Commencement Information

- I1** S. 96 wholly in force at 1.1.1997; s. 96 not in force at Royal Assent see s. 125(3); s. 96(2) wholly in force and s. 96(1)(5)(6) in force for E.W. and s. 96(4) in force for specified purposes at 1.11.1995 by S.I. 1995/2765, **art. 2**; s. 96(1)(5)(6) in force for S. and s. 96(3) wholly in force and s. 96(4) in force for further specified purposes at 1.1.1997 by S.I. 1996/2857, **art. 2**

#### Marginal Citations

- M11** 1972 c. 52.  
**M12** 1990 c. 8.  
**M13** 1991 c. 34.

*Hedgerows etc.*

## 97 Hedgerows.

- (1) The appropriate Ministers may by regulations make provision for, or in connection with, the protection of important hedgerows in England or Wales.
- (2) The question whether a hedgerow is or is not “important” for the purposes of this section shall be determined in accordance with prescribed criteria.
- (3) For the purpose of facilitating the protection of important hedgerows, regulations under subsection (1) above may also make provision in relation to other hedgerows in England or Wales.
- (4) Without prejudice to the generality of subsections (1) to (3) above, regulations under subsection (1) above may provide for the application (with or without modifications) of, or include provision comparable to, any provision contained in the planning Acts and may, in particular, make provision—
  - (a) prohibiting, or for prohibiting, the removal of, or the carrying out of prescribed acts in relation to, a hedgerow except in prescribed cases;
  - (b) for or with respect to appeals against determinations or decisions made, or notices given or served, under or by virtue of the regulations, including provision authorising or requiring any body or person to whom an appeal lies to consult prescribed persons with respect to the appeal in prescribed cases;
  - (c) for a person who contravenes, or fails to comply with, any prescribed provision of the regulations to be guilty of an offence;
  - (d) for a person guilty of an offence by virtue of paragraph (c) above which consists of the removal, in contravention of the regulations, of a hedgerow of a description prescribed for the purposes of this paragraph to be liable—
    - (i) on summary conviction, to a fine not exceeding the statutory maximum, or
    - (ii) on conviction on indictment, to a fine;
  - (e) for a person guilty of any other offence by virtue of paragraph (c) above to be liable on summary conviction to a fine not exceeding such level on the standard scale as may be prescribed.

*Status: Point in time view as at 01/04/2019.*

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- (5) Regulations under this section may make different provision for different cases, including different provision in relation to different descriptions of hedgerow, different descriptions of person, different areas or localities or different circumstances.
- (6) Before making any regulations under this section the appropriate Ministers shall consult—
- (a) such bodies appearing to them to be representative of persons whose business interests are likely to be affected by the proposed regulations,
  - (b) such bodies appearing to them to be representative of the interests of owners or occupiers of land,
  - (c) such bodies appearing to them to be representative of the interests of local authorities,
  - (d) such bodies whose statutory functions include the provision to Ministers of the Crown of advice concerning matters relating to environmental conservation, and
  - (e) such bodies not falling within paragraphs (a) to (d) above,
- as the appropriate Ministers may consider appropriate.
- [<sup>F19</sup>(6A) Subsection (6)(d) does not apply to regulations which apply only in relation to England.]
- (7) No statutory instrument containing regulations under this section shall be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (8) In this section—
- “the appropriate Ministers” means—
    - (a) as respects England, the Secretary of State and the Minister of Agriculture, Fisheries and Food;
    - (b) as respects Wales, the Secretary of State;
  - “environmental conservation” means conservation—
    - (a) of the natural beauty or amenity, or flora or fauna, of England or Wales; or
    - (b) of features of archaeological or historic interest in England or Wales;
  - “hedgerow” includes any stretch of hedgerow;
  - “local authority” means—
    - (a) the council of a county, county borough, district, London borough, parish or community;
    - (b) the Common Council of the City of London;
    - (c) the Council of the Isles of Scilly;
  - “the planning Acts” has the same meaning as it has in the <sup>M14</sup>Town and Country Planning Act 1990 by virtue of section 336(1) of that Act;
  - “prescribed” means specified, or of a description specified, in regulations;
  - “regulations” means regulations made by statutory instrument;
  - “remove”, in relation to a hedgerow, means uproot or otherwise destroy, and cognate expressions shall be construed accordingly;
  - “statutory functions” means functions conferred or imposed by or under any enactment.

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- (9) Any reference in this section to removing, or carrying out an act in relation to, a hedgerow includes a reference to causing or permitting another to remove, or (as the case may be) carry out an act in relation to, a hedgerow.

**Textual Amendments**

**F19** S. 97(6A) inserted (E.) (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), s. 115(3)(l), [Sch. 22 para. 12](#)

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

**C1** S. 97 explained (1.6.1997) by [S.I. 1997/1160](#), [reg. 4](#)

**Marginal Citations**

**M14** [1990 c. 8](#).

**98 Grants for purposes conducive to conservation.**

- (1) The appropriate Minister, with the consent of the Treasury [<sup>F20</sup>as respects England and Wales], may by regulations make provision for and in connection with the making of grants to persons who do, or who undertake to that Minister that they will do, anything which in the opinion of that Minister is conducive to—
- (a) the conservation or enhancement of the natural beauty or amenity of the countryside (including its flora and fauna and geological and physiographical features) or of any features of archaeological interest there; or
  - (b) the promotion of the enjoyment of the countryside by the public.
- (2) Regulations under this section may—
- (a) make different provision for different cases or classes of case or for different areas;
  - (b) provide for grants to be made subject to conditions;
  - (c) confer power on the appropriate Minister to modify, in any particular case, the conditions to which a grant would otherwise be subject, if he is satisfied that the making of that grant, subject to the conditions as so modified, is consistent with the purposes for which the regulations are made;
  - (d) make provision for or in connection with the recovery of any sums paid by way of grant, or the withholding of any further payments of grant, in cases where the applicant for the grant—
    - (i) in making the application, or in furnishing any information in connection with the application, has made a statement which was false or misleading in a material respect;
    - (ii) has failed to do something which he undertook to do if the grant was made; or
    - (iii) is in breach of any condition subject to which the grant was made.
- (3) The 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.
- (4) The powers conferred by this section are in addition to any other powers of the Secretary of State or the Minister of Agriculture, Fisheries and Food.
- (5) In this section “the appropriate Minister” means—

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- (a) as respects England, the Minister of Agriculture, Fisheries and Food;
- (b) as respects Wales, the Secretary of State;
- (c) as respects Scotland, the Secretary of State.

**Textual Amendments**

**F20** Words in s. 98(1) inserted (1.7.1999) by S.I. 1999/1820, arts. 1(2), 4, **Sch. 2 Pt. I para. 120(7)**; S.I. 1998/3178, **art. 3**

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

**C2** S. 98 extended (to Isles of Scilly) (1.5.1996) by S.I. 1996/1030, **art. 3**

**F2199 Consultation before making or modifying certain subordinate legislation for England.**

.....

**Textual Amendments**

**F21** S. 99 omitted (E.) (26.5.2015) by virtue of **Deregulation Act 2015 (c. 20)**, s. 115(3)(l), **Sch. 22 para. 13**

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

**C3** S. 99 extended (to Isles of Scilly) (1.5.1996) by S.I. 1996/1030, **art. 3**

*Drainage*

**100 Meaning of “drainage” in certain enactments.**

- (1) In the definition of “drainage” in section 113(1) of the <sup>M15</sup>Water Resources Act 1991, after paragraph (c) there shall be added the words “and
  - (d) the carrying on, for any purpose, of any other practice which involves management of the level of water in a watercourse;”.
- (2) For the definition of “drainage” in section 72(1) of the <sup>M16</sup>Land Drainage Act 1991 there shall be substituted—
  - ““drainage” includes—
    - (a) defence against water (including sea water);
    - (b) irrigation, other than spray irrigation;
    - (c) warping; and
    - (d) the carrying on, for any purpose, of any other practice which involves management of the level of water in a watercourse;”.

**Marginal Citations**

**M15** 1991 c. 57.

**M16** 1991 c. 59.

*Status: Point in time view as at 01/04/2019.*

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## 101 Grants in connection with drainage works.

<sup>F22</sup>(1) .....

(2) In section 59 of the <sup>M17</sup>Land Drainage Act 1991 (grants to drainage bodies) in subsection (4), after the words “expenditure properly incurred by them with a view to” there shall be inserted “ (a) ” and at the end of that subsection there shall be added—

- “(b) enabling them to determine in any particular case whether drainage works, or drainage works of any particular description, should or should not be carried out;
- (c) obtaining or organising information, including information about natural processes affecting the coastline, to enable them to formulate or develop their plans with respect to the defence against sea water of any part of the coastline; or
- (d) obtaining, at any time after the carrying out of drainage works, information with respect to—
  - (i) the quality or effectiveness, or the effect on the environment, of those works; or
  - (ii) any matter of a financial nature relating to those works.

(4A) Paragraphs (b) to (d) of subsection (4) above are without prejudice to any power—

- (a) to make any grant under subsection (1) or (4)(a) above, or
  - (b) to impose any condition under subsection (2) above,
- which could be made or imposed apart from those paragraphs.”

### Textual Amendments

**F22** S. 101(1) repealed (17.3.2004 for E., 1.4.2004 for W.) by [Water Act 2003 \(c. 37\), s. 105\(3\), Sch. 7 para. 42, Sch. 9 Pt. 3](#); [S.I. 2004/641, art. 2\(c\)\(d\)](#); [S.I. 2004/910, art. 2\(1\)\(c\)\(d\)](#)

### Marginal Citations

**M17** 1991 c. 59.

## *Fisheries*

## 102 Sea fisheries.

[<sup>F23</sup>(1) The <sup>M18</sup>Sea Fisheries Regulation Act 1966 shall be amended in accordance with the following provisions of this section.

(2) In section 2 (constitution of local fisheries committees) in subsection (2) (which includes provision for the members appointed by the Minister to be persons acquainted with the needs and opinions of the fishing interests of that district) after the words “of that district” there shall be added the words “ or as being persons having knowledge of, or expertise in, marine environmental matters ”.

(3) After that subsection there shall be inserted—

“(2A) In addition to the members appointed as mentioned in subsection (1) above, a local fisheries committee may appoint such number of persons with knowledge of or expertise in marine environmental matters as it thinks



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fit as further members of the committee for those occasions on which it is considering any proposed byelaw under section 5 below by virtue of section 5A below, or any proposed amendment or revocation of such a byelaw.”

(4) At the end of that section there shall be added—

“(7) In this section “marine environmental matters” means—

- (a) the conservation or enhancement of the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas; or
- (b) the conservation of flora or fauna which are dependent on, or associated with, a marine or coastal environment.”

(5) After section 5 (byelaws for regulation etc of sea fisheries) there shall be inserted—

**“ Byelaws under section 5 for marine environmental purposes.**

- (1) Any power to make byelaws conferred by section 5 above may be exercised for marine environmental purposes.
- (2) The power to make byelaws under section 5 above by virtue of this section is in addition to, and not in derogation from, the power to make byelaws under that section otherwise than by virtue of this section.
- (3) Byelaws under section 5 above by virtue of this section shall be submitted for confirmation under section 7 below—
  - (a) in the case of a byelaw which is to have effect in England, only after consultation with the Nature Conservancy Council for England;
  - (b) in the case of a byelaw which is to have effect in Wales, only after consultation with the Countryside Council for Wales.
- (4) In this section “marine environmental purposes” means the purposes—
  - (a) of conserving or enhancing the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas; or
  - (b) of conserving flora or fauna which are dependent on, or associated with, a marine or coastal environment.”
- (6) In section 8 (power of Minister to revoke byelaws if it appears necessary or desirable for the maintenance or improvement of fisheries) after the words “maintenance or improvement of fisheries” there shall be inserted the words “ or for marine environmental purposes, within the meaning of section 5A above, ”.]

**Textual Amendments**

**F23** S. 102 repealed (1.4.2010 for W., 1.4.2011 for E.) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), [Sch. 22 Pt. 4](#); S.I. 2010/630, art. 3(b) (with arts. 8, 12); S.I. 2011/556, art. 2(2)(o) (with art. 2(3))

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#### Marginal Citations

M18 1966 c. 38.

### 103 Other marine or aquatic environmental conservation powers.

- (1) After section 5 of the <sup>M19</sup>Sea Fish (Conservation) Act 1967 (power to restrict fishing for sea fish) there shall be inserted—

**“5A Powers to restrict fishing for marine environmental purposes.**

- (1) Any power to make an order under section 5 above may be exercised for marine environmental purposes.
- (2) The power to make an order under section 5 above by virtue of this section is in addition to, and not in derogation from, the power to make an order under that section otherwise than by virtue of this section.
- (3) In this section “marine environmental purposes” means the purposes—
  - (a) of conserving or enhancing the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas; or
  - (b) of conserving flora or fauna which are dependent on, or associated with, a marine or coastal environment.”

- (2) After section 2 of the <sup>M20</sup>Inshore Fishing (Scotland) Act 1984 there shall be inserted—

**“2A Powers to restrict fishing, or to prohibit the carriage of specified types of net, for marine environmental purposes.**

- (1) Any power to make an order under section 1 or 2 above may be exercised for marine environmental purposes.
  - (2) The power to make an order under section 1 or 2 above by virtue of this section is in addition to, and not in derogation from, the power to make an order under that section otherwise than by virtue of this section.
  - (3) In this section “marine environmental purposes” means the purposes—
    - (a) of conserving or enhancing the natural beauty or amenity of marine or coastal areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas; or
    - (b) of conserving flora or fauna which are dependent on, or associated with, a marine or coastal environment.”
- (3) In Schedule 25 to the <sup>M21</sup>Water Resources Act 1991 (byelaw making powers) after paragraph 6 (byelaws for purposes of fisheries functions) there shall be inserted—

#### **Fisheries byelaws for marine or aquatic environmental purposes**

- “6A (1) Any power to make byelaws conferred by paragraph 6 above may be exercised for marine or aquatic environmental purposes.

*Status: Point in time view as at 01/04/2019.*

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- (2) The power to make byelaws under paragraph 6 above by virtue of this paragraph is in addition to, and not in derogation from, the power to make byelaws under that paragraph otherwise than by virtue of this paragraph.
- (3) In this paragraph “marine or aquatic environmental purposes” means—
  - (a) the conservation or enhancement of the natural beauty or amenity of marine or coastal, or aquatic or waterside, areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas; or
  - (b) the conservation of flora or fauna which are dependent on, or associated with, a marine or coastal, or aquatic or waterside, environment.”

#### Marginal Citations

M19 1967 c. 84.

M20 1984 c. 26.

M21 1991 c. 57.

## 104 Fixed penalty system for certain fisheries offences.

- (1) After section 37 of the <sup>M22</sup>Salmon and Freshwater Fisheries Act 1975 there shall be inserted—

### “37A Fixed penalty notices for certain offences.

- (1) Where on any occasion a water bailiff or other officer of the Agency finds a person who he has reason to believe is committing, or has on that occasion committed, a fixed penalty offence, he may give to that person a notice (in this section referred to as a “fixed penalty 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 fixed penalty notice in respect of a fixed penalty offence—
  - (a) no proceedings shall be instituted for that offence before the expiration of the period for paying the fixed penalty; and
  - (b) he shall not be convicted of that offence if the fixed penalty is paid before the expiration of that period.
- (3) The Agency may extend the period for paying the fixed penalty in any particular case if it considers it appropriate to do so in all the circumstances of the case.
- (4) If, in any particular case, the Agency considers that a fixed penalty notice which has been given ought not to have been given, it may give to the person to whom the fixed penalty notice was given a notice withdrawing the fixed penalty notice; and where notice under this subsection is given—
  - (a) the Agency shall repay any amount which has been paid by way of fixed penalty in pursuance of the fixed penalty notice; and

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- (b) no proceedings shall be instituted or continued against that person for the offence in question.
- (5) The amount by which the sums received by the Agency by way of fixed penalties exceed the sums repaid by it under subsection (4)(a) above shall be paid into the Consolidated Fund.
- (6) In any proceedings, a certificate purporting to be signed by or on behalf of the Chief Executive of the Agency and stating either—
  - (a) that payment of a fixed penalty was, or (as the case may be) was not, received by the Agency on or before a date specified in the certificate, or
  - (b) that an envelope containing an amount sent by post in payment of a fixed penalty was marked as posted on a date specified in the certificate,
 shall be received as evidence of the matters so stated and shall be treated, without further proof, as being so signed unless the contrary is shown.
- (7) A fixed penalty notice shall give such reasonable particulars of the circumstances alleged to constitute the fixed penalty offence to which the notice relates as are necessary for giving reasonable information of the offence and shall state—
  - (a) the monetary amount of the fixed penalty which may be paid;
  - (b) the person to whom and the address at which—
    - (i) the fixed penalty may be paid, and
    - (ii) any correspondence relating to the fixed penalty notice may be sent;
  - (c) the method or methods by which payment of the fixed penalty may be made;
  - (d) the period for paying the fixed penalty;
  - (e) the consequences of the fixed penalty not being paid before the expiration of that period.
- (8) A fixed penalty notice may also contain such other information relating to, or for the purpose of facilitating, the administration of the fixed penalty system as the Agency considers necessary or desirable.
- (9) Regulations may—
  - (a) make provision with respect to the giving of fixed penalty notices, including, in particular, provision with respect to—
    - (i) the methods by which,
    - (ii) the officers, servants or agents by, to or on whom, and
    - (iii) the places at which,
 fixed penalty notices may be given by, or served on behalf of, a water bailiff or other officer of the Agency;
  - (b) prescribe the method or methods by which fixed penalties may be paid;
  - (c) make provision for or with respect to the issue of prescribed documents to persons to whom fixed penalty notices are or have been given.
- (10) In this section—

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“fixed penalty” means a penalty of such amount as may be prescribed (whether by being specified in, or made calculable under, regulations);

“fixed penalty offence” means, subject to subsection (11) below, any offence—

- (a) under this Act,
- (b) under the <sup>M23</sup>Salmon Act 1986,
- (c) under or by virtue of regulations or orders made under section 115, 116 or 142 of the <sup>M24</sup>Water Resources Act 1991, or
- (d) under section 211(3) of that Act, so far as relating to byelaws made by virtue of paragraph 6 of Schedule 25 to that Act,

which is for the time being prescribed for the purpose;

“the fixed penalty system” means the system implementing this section and regulations made under it;

“the Ministers” means the Secretary of State and the Minister;

“notice” means notice in writing;

“the period for paying”, in relation to any fixed penalty, means such period as may be prescribed for the purpose;

“prescribed” means prescribed by regulations;

“regulations” means regulations made under this section by the Ministers.

- (11) The provision that may be made by regulations prescribing fixed penalty offences includes provision for an offence to be a fixed penalty offence—
    - (a) only if it is committed in such circumstances or manner as may be prescribed; or
    - (b) except if it is committed in such circumstances or manner as may be prescribed.
  - (12) Regulations may provide for any offence which is a fixed penalty offence to cease to be such an offence.
  - (13) An offence which, in consequence of regulations made by virtue of subsection (12) above, has ceased to be a fixed penalty offence shall be eligible to be prescribed as such an offence again.
  - (14) Regulations may—
    - (a) make different provision in relation to different cases or classes of case; or
    - (b) provide for such exceptions, limitations and conditions, or make such incidental, supplemental, consequential or transitional provision, as the Ministers consider necessary or expedient.
  - (15) Any power to make regulations under this section shall be exercisable by statutory instrument made by the Ministers; and a statutory instrument containing any such regulations shall be subject to annulment pursuant to a resolution of either House of Parliament.”
- (2) In section 35 of that Act (which, among other things, creates an offence of failing to state one’s name and address when required to do so under that section) in subsection (1) (water bailiffs and constables), for the words from “A water bailiff” to

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“any constable” there shall be substituted the words “ A water bailiff or other officer of the Agency, or any constable, ”.

(3) After that subsection there shall be inserted—

“(1A) Without prejudice to subsection (1) above, a water bailiff or other officer of the Agency who on any occasion finds a person who he has reason to believe is committing, or has on that occasion committed, a fixed penalty offence, within the meaning of section 37A below, may require that person to state his name and address.”

(4) In section 41(1) of that Act (definitions), before the definition of “authorised officer” there shall be inserted—

““the Agency” means the Environment Agency;”.

#### Marginal Citations

**M22** 1975 c. 51.

**M23** 1986 c. 62.

**M24** 1991 c. 57.

### 105 Minor and consequential amendments relating to fisheries.

Schedule 15 to this Act (which makes minor and consequential amendments relating to fisheries) shall have effect.

#### Commencement Information

**I2** [S. 105](#) partly in force; [s. 105](#) not in force at Royal Assent see [s. 125\(3\)](#); [s. 105](#) in force for specified purposes at 21.9.1995 by [S.I. 1995/1983, art. 3](#); [s. 105](#) in force for further specified purposes at 1.2.1996 by [S.I. 1996/186, art 2](#); [s. 105](#) in force for further specified purposes at 1.4.1996 by [S.I. 1996/186, art 3](#); [s. 105](#) in force for further specified purposes at 1.1.1999 by [S.I. 1995/1983, art. 4](#)

#### *New provisions for Scotland*

### 106 Control of pollution of water in Scotland.

Schedule 16 to this Act (which amends the Control of Pollution Act 1974 as respects the control of pollution of rivers and coastal waters in Scotland) shall have effect.

### 107 Statutory nuisances: Scotland.

Schedule 17 to this Act (which makes provision with respect to statutory nuisances in Scotland) shall have effect.

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## *[<sup>F24</sup>Powers of Entry][<sup>F24</sup>Enforcement]*

### Textual Amendments

- F24** S. 108 cross-heading substituted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), [Sch. 2 para. 2](#)

## **108 Powers of enforcing authorities and persons authorised by them.**

- (1) A person who appears suitable to an enforcing authority may be authorised in writing by that authority to exercise, in accordance with the terms of the authorisation, any of the powers specified in subsection (4) below for the purpose—
- (a) of determining whether any provision of the pollution control enactments [<sup>F25</sup>or flood risk activity enactments] in the case of that authority is being, or has been, complied with;
  - (b) of exercising or performing one or more of the pollution control functions [<sup>F26</sup>or flood risk activity functions] of that authority; [<sup>F27</sup>or]
  - (c) of determining whether and, if so, how such a function should be exercised or performed.
  - [<sup>F28</sup>(d) of determining whether any of the following offences are being or have been committed—
    - (i) an offence under section 110 of this Act;
    - (ii) an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014 (offences relating to significant environmental harm);
    - (iii) an offence under section 293(2) of the Criminal Procedure (Scotland) Act 1995 (statutory offences: art and part and aiding or abetting) as it applies in relation to an offence mentioned in sub-paragraph (i) or (ii) above;
    - (iv) an attempt, conspiracy or incitement to commit an offence mentioned in sub-paragraph (i) or (ii) above; or
  - (e) in a case only where the person is authorised by SEPA, of determining whether, and if so to what extent, any financial benefit has accrued or is likely to accrue to a person in connection with an offence mentioned in subsection (1A) below which the authorised person reasonably believes is being or has been committed.]
- [<sup>F29</sup>(1A) The offence is a relevant offence (within the meaning of section 53 of the Regulatory Reform (Scotland) Act 2014) for the purpose of provision made under section 24, or of section 35, of that Act).]
- (2) A person who appears suitable to the Agency [<sup>F30</sup>, the Natural Resources Body for Wales] or SEPA may be authorised in writing by the Agency [<sup>F30</sup>, the Natural Resources Body for Wales] or, as the case may be, SEPA to exercise, in accordance with the terms of the authorisation, any of the powers specified in subsection (4) below for the purpose of enabling the Agency [<sup>F30</sup>, the Natural Resources Body for Wales] or, as the case may be, SEPA to carry out any assessment or prepare any report which the Agency [<sup>F30</sup>, the Natural Resources Body for Wales] or, as the case may be, SEPA is required to carry out or prepare under section 5(3) or 33(3) above.
- (3) Subsection (2) above only applies where the Minister who required the assessment to be carried out, or the report to be prepared, has, whether at the time of making the

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requirement or at any later time, notified the Agency [<sup>F31</sup>, the Natural Resources Body for Wales] or, as the case may be, SEPA that the assessment or report appears to him to relate to an incident or possible incident involving or having the potential to involve—

- (a) serious pollution of the environment,
- (b) serious harm to human health, or
- (c) danger to life or health.

(4) The powers which a person may be authorised to exercise under subsection (1) or (2) above are—

- (a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises which he has reason to believe it is necessary for him to enter;
- (b) on entering any premises by virtue of paragraph (a) above, to take with him—
  - (i) any other person duly authorised by the enforcing authority and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and
  - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) to make such examination and investigation as may in any circumstances be necessary;
- (d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (c) above;
- (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c) above;
- (f) to take samples, or cause samples to be taken, of any 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;
- [<sup>F32</sup>(g) in the case of any article or substance found in or on any premises which the person has power to enter, being an article or substance which appears to that person to have caused or to be likely to cause—
  - (i) pollution of the environment,
  - (ii) harm to the environment,
  - (iii) flooding,
  - (iv) harm to human health, or
  - (v) a detrimental impact on drainage,
 to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);]
- (h) in the case of any such article or substance as is mentioned in paragraph (g) above, 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, or cause it to be examined, and to do, or cause to be done, to it anything which he has power to do under that paragraph;
  - (ii) to ensure that it is not tampered with before examination of it is completed;



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- (iii) to ensure that it is available for use as evidence in any proceedings for an offence under the pollution control enactments [<sup>F33</sup>or flood risk activity enactments] in the case of the enforcing authority under whose authorisation he acts or in any other proceedings relating to a variation notice, enforcement notice or prohibition notice under those enactments;
- [<sup>F34</sup>(iv) to ensure that it is available for use as evidence in any proceedings for an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014;]
- (j) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (c) above—
  - [<sup>F35</sup>(i)] to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers[<sup>F36</sup>; and
  - (ii) without prejudice to the generality of paragraph (c) above, to attend at such place and at such reasonable time as the authorised person may specify to answer those questions and sign such a declaration;]
- [<sup>F37</sup>(ja) in a case only where he is authorised under subsection (1) or (2) above by SEPA, and without prejudice to the generality of paragraphs (c) and (j) above, to require any person whom he has reasonable cause to believe to be able to give any information relevant to an examination or investigation under paragraph (c) above, to provide the person's name, address and date of birth;]
- (k) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records—
  - (i) which are required to be kept under the pollution control enactments [<sup>F38</sup>or flood risk activity enactments] for the enforcing authority under whose authorisation he acts, or
  - (ii) which it is necessary for him to see for the purposes of an examination or investigation under paragraph (c) above,and to inspect and take copies of, or of any entry in, the records;
- [<sup>F39</sup>(ka) as regards any premises which by virtue of an authorisation from SEPA he has power to enter, to search the premises and seize and remove any documents found in or on the premises which he has reasonable cause to believe—
  - (i) may be required as evidence for the purpose of proceedings relating to an offence under any of the pollution control enactments, or under section 40(1) of the Regulatory Reform (Scotland) Act 2014, which he reasonably believes is being or has been committed; or
  - (ii) may assist in determining whether, and if so to what extent, any financial benefit has accrued or is likely to accrue as mentioned in subsection (1)(e) above;]
- (l) 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 authorised person to exercise any of the powers conferred on him by this section;
- (m) any other power for—
  - (i) a purpose falling within any paragraph of subsection (1) above, or
  - (ii) any such purpose as is mentioned in subsection (2) above,

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which is conferred by regulations made by the Secretary of State.

- (5) The powers which by virtue of subsections (1) and (4) above are conferred in relation to any premises for the purpose of enabling an enforcing authority to determine whether any provision of the pollution control enactments [<sup>F40</sup>or flood risk activity enactments] in the case of that authority is being, or has been, complied with [<sup>F41</sup>, or whether an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014 is being, or has been, committed,] shall include power, in order to obtain the information on which that determination may be made,—
- (a) to carry out experimental borings or other works on those premises; and
  - (b) to install, keep or maintain monitoring and other apparatus there.
- (6) Except in an emergency, in any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of this section shall only be effected—
- (a) [<sup>F42</sup>after the expiration of at least seven days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question, and]
  - (b) either—
    - (i) with the consent of a person who is in occupation of those premises; or
    - (ii) under the authority of a warrant by virtue of Schedule 18 to this Act.
- (7) Except in an emergency, where an authorised person proposes to enter any premises and—
- (a) entry has been refused and he apprehends on reasonable grounds that the use of force may be necessary to effect entry, or
  - (b) he apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,
- any entry on to those premises by virtue of this section shall only be effected under the authority of a warrant by virtue of Schedule 18 to this Act.
- [<sup>F43</sup>(7A) An authorised person may not exercise the power in subsection (4)(ka) above to seize and remove documents except under the authority of a warrant by virtue of Schedule 18 to this Act.
- (7B) Section 108A applies where documents are removed under that power.
- (7C) Subsections (7D) and (7E) apply where a document removed under that power contains information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings.
- (7D) The information may not be used—
- (a) in evidence for the purpose of proceedings mentioned in paragraph (ka)(i) of subsection (4) above against a person who would be entitled to make such a claim in relation to the document; or
  - (b) to determine whether any financial benefit has accrued or is likely to accrue as mentioned in subsection (1)(e) above.
- (7E) The document must be returned to the premises from which it was removed, or to the person who had possession or control of it immediately before it was removed, as soon as reasonably practicable after the information is identified as information described in subsection (7C) above (but the authorised person may retain, or take copies of, any other information contained in the document).]

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- (8) In relation to any premises belonging to or used for the purposes of the United Kingdom Atomic Energy Authority, subsections (1) to (4) above shall have effect subject to section 6(3) of the Atomic Energy Authority Act 1954 (which restricts entry to such premises where they have been declared to be prohibited places for the <sup>M25</sup>purposes of the <sup>M26</sup>Official Secrets Act 1911).
- (9) 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 (4)(f) above.
- (10) Where an authorised person proposes to exercise the power conferred by subsection (4)(g) above in the case of an article or substance found on any premises, 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.
- (11) Before exercising the power conferred by subsection (4)(g) above in the case of any article or substance, an authorised person shall consult—
- (a) such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test, and
  - (b) such other 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 or cause to be done under the power.
- (12) No answer given by a person in pursuance of a requirement imposed under subsection (4)(j) above shall be admissible in evidence in England and Wales against that person in any proceedings, or in Scotland against that person in any criminal proceedings<sup>F44</sup>, except in a case where the proceedings relate to—
- (a) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations), or
  - (b) another offence where in giving evidence the person makes a statement inconsistent with the answer.]
- (13) 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.
- (14) Schedule 18 to this Act shall have effect with respect to the powers of entry and related powers which are conferred by this section.
- (15) In this section—
- “authorised person” means a person authorised under subsection (1) or (2) above;
  - <sup>F45</sup>“document” includes any thing in which information of any description is recorded (by any means) and any part of such a thing;]
  - <sup>F46</sup>“domestic property” has the meaning given by section 75(5)(a) of the Environmental Protection Act 1990;]
  - <sup>F47</sup>“emergency” means a case in which it appears to the authorised person in question—
- (a) that there is an immediate risk of serious harm or that circumstances exist which are likely to endanger life or health, and

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- (b) that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy,
- and for this purpose “serious harm” means—
- (i) serious pollution of the environment,
  - (ii) serious harm to the environment,
  - (iii) serious flooding,
  - (iv) serious harm to human health, or
  - (v) a serious detrimental impact on drainage;]
- “enforcing authority” means—
- (a) the Secretary of State;
  - (b) the Agency;
  - (bza) [<sup>F48</sup>the Natural Resources Body for Wales;]
  - (ba) [<sup>F49</sup>a waste collection authority;]
  - (c) SEPA; or
  - (d) a local enforcing authority;
- [<sup>F50</sup>“English waste collection authority” has the same meaning as in section 45A of the Environmental Protection Act 1990;]
- [<sup>F51</sup>“flood risk activity enactment”, in relation to an enforcing authority, means an enactment relating to the flood risk activity functions of that authority;
- “flood risk activity functions”, in relation to the Agency or the Natural Resources Body for Wales, means the functions relating to flood risk activities conferred or imposed on it by or under regulations made under section 61 of the Water Act 2014;]
- “local enforcing authority” means—
- (a) [<sup>F52</sup>a local enforcing authority, within the meaning of Part I of the <sup>M27</sup>Environmental Protection Act 1990;]
  - (b) a local authority, within the meaning of Part IIA of that Act, in its capacity as an enforcing authority for the purposes of that Part;
  - (c) a local authority for the purposes of Part IV of this Act or regulations under that Part;
  - (d) a local authority for the purposes of regulations under section 2 of the Pollution Prevention and Control Act 1999 extending to England and Wales [<sup>F53</sup>or regulations under section 61 of the Water Act 2014] ;
- “mobile plant” means plant which is designed to move or to be moved whether on roads or otherwise;
- “pollution control enactments”, in relation to an enforcing authority, means the <sup>M28</sup>enactments and instruments relating to the <sup>M29</sup>pollution control functions of that authority [<sup>F54</sup>(including any enactments comprised in, or in instruments made under, an Act of the Scottish Parliament relating to those functions).]
- “pollution control functions”, in relation to the <sup>M30</sup>Agency [<sup>F55</sup>, the Natural Resources Body for Wales] or SEPA, means the <sup>M31</sup>functions conferred or imposed on it by or under—
- (a) [<sup>F56</sup>the Alkali, &c, Works Regulation Act 1906;]
  - (b) <sup>F57</sup> ...
  - (c) <sup>F57</sup> ...

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- (d) <sup>F58</sup> ...
  - (e) Parts I, IA and II of the <sup>M32</sup>Control of Pollution Act 1974;
  - (f) the Control of Pollution (Amendment) Act 1989;
  - (g) Parts<sup>F52</sup> I,] II and IIA of the <sup>M33</sup>Environmental Protection Act 1990 (integrated pollution control, waste on land and contaminated land);
  - (h) Chapter III of Part IV of the <sup>M34</sup>Water Industry Act 1991 (special category effluent);
  - (j) Part III and sections 161 to 161D of the <sup>M35</sup>Water Resources Act 1991;
  - (k) section 19 of the <sup>M36</sup>Clean Air Act 1993;
  - (l) <sup>F59</sup> ...
  - (m) regulations made by virtue of section 2(2) of the <sup>M37</sup>European Communities Act 1972, to the extent that the regulations relate to pollution;
  - (n) [<sup>F60</sup> in relation to SEPA , regulations under section 2 of the Pollution Prevention and Control Act 1999 [<sup>F61</sup>or section 18 of the Regulatory Reform (Scotland) Act 2014]; ]
  - (o) [<sup>F62</sup>regulations made by virtue of section 78YC of the Environmental Protection Act 1990;]  
[<sup>F63</sup>and, in relation to the Agency [<sup>F64</sup>or the Natural Resources Body for Wales], includes the functions conferred or imposed on, or transferred to, it under section 2 of the Pollution Prevention and Control Act 1999 [<sup>F65</sup>or regulations under section 61 of the Water Act 2014][<sup>F66</sup>but, in relation to the Natural Resources Body for Wales, does not include any functions which were exercisable by the Countryside Council for Wales or the Forestry Commissioners immediately before 1 April 2013 and are functions of that Body by virtue of the Natural Resources Body for Wales (Functions) Order 2013;];]
- [<sup>F67</sup> “pollution control functions”, in relation to a waste collection authority, means [<sup>F68</sup>—
- (a) in relation to an English waste collection authority, the functions conferred or imposed on it by or under Part 2 of the Environmental Protection Act 1990 (other than sections 45, 45A and 46 of that Act so far as relating to the collection of household waste from domestic property); and
  - (b) in relation to any other waste collection authority,]  
the functions [<sup>F69</sup>conferred on it by section 59][<sup>F69</sup>conferred or imposed on it by or under Part 2] of the Environmental Protection Act 1990;
- “pollution control functions”, in relation to a local enforcing authority, means the functions conferred or imposed on, or transferred to, that authority—
- (a) by or under Part<sup>F52</sup> I or] IIA of the <sup>M38</sup>Environmental Protection Act 1990;
  - (b) by or under regulations made by virtue of Part IV of this Act; or
  - (c) by or under regulations made by virtue of section 2(2) of the <sup>M39</sup>European Communities Act 1972, to the extent that the regulations relate to pollution; [<sup>F70</sup>or
  - (d) by or under regulations made by virtue of section 78YC of the Environmental Protection Act 1990;]

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[<sup>F71</sup>and, in relation to an authority in England or Wales, includes the functions conferred or imposed on, or transferred to, that authority under section 2 of the Pollution Prevention and Control Act 1999;]

“pollution control functions”, in relation to the Secretary of State, means any functions which are conferred or imposed upon him by or under any enactment or instrument [<sup>F72</sup>(including any enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament)] and which relate to the control of pollution;

“premises” includes any land, vehicle, vessel or mobile plant.

[<sup>F73</sup> “ waste collection authority ” shall be construed in accordance with section 30(3)(a), (b) and (bb) of the Environmental Protection Act 1990. ]

- (16) 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

- F25** Words in s. 108(1)(a) inserted (E.W.) (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), reg. 1(2), **Sch. 3 para. 3(3)(a)(i)** (with regs. 31-33)
- F26** Words in s. 108(1)(b) inserted (E.W.) (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), reg. 1(2), **Sch. 3 para. 3(3)(a)(ii)** (with regs. 31-33)
- F27** Word in s. 108(1) repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(a)(i)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F28** S. 108(1)(d)(e) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(a)(ii)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F29** S. 108(1A) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(b)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F30** Words in s. 108(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 382(2)** (with Sch. 7)
- F31** Words in s. 108(3) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 382(2)** (with Sch. 7)
- F32** S. 108(4)(g) substituted (E.W.) (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), reg. 1(2), **Sch. 3 para. 3(3)(b)(i)** (with regs. 31-33)
- F33** Words in s. 108(4)(h)(iii) inserted (E.W.) (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), reg. 1(2), **Sch. 3 para. 3(3)(b)(ii)** (with regs. 31-33)
- F34** S. 108(4)(h)(iv) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(c)(i)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F35** S. 108(4)(j) renumbered as s. 108(4)(j)(i) (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(c)(ii)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F36** S. 108(4)(j)(ii) and word inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(c)(ii)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F37** S. 108(4)(ja) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(2)(c)(iii)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F38** Words in s. 108(4)(k)(i) inserted (E.W.) (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), reg. 1(2), **Sch. 3 para. 3(3)(b)(iii)** (with regs. 31-33)

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- F39** S. 108(4)(ka) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), **ss. 46(2)(c)(iv)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F40** Words in s. 108(5) inserted (E.W.) (6.4.2016) by The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016 (S.I. 2016/475), reg. 1(2), **Sch. 3 para. 3(3)(c)** (with regs. 31-33)
- F41** Words in s. 108(5) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), **ss. 46(2)(d)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F42** S. 108(6)(a) repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), **ss. 46(2)(e)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F43** S. 108(7A)-(7E) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), **ss. 46(2)(f)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F44** Words in s. 108(12) added (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), **ss. 46(2)(g)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F45** Words in s. 108(15) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), **ss. 46(2)(h)(i)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F46** Words in s. 108(15) inserted (E.W.) (1.7.2012) by Protection of Freedoms Act 2012 (c. 9), s. 120, **Sch. 2 para. 3(2)** (with s. 97)
- F47** Words in s. 108(15) substituted (E.W.) (6.4.2016) by The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016 (S.I. 2016/475), reg. 1(2), **Sch. 3 para. 3(3)(d)(i)** (with regs. 31-33)
- F48** Words in s. 108(15) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 382(3)(a)** (with Sch. 7)
- F49** Words in s. 108(15) inserted (E.W.) (31.3.2004 for W., 31.3.2004 for E.) by Anti-social Behaviour Act 2003 (c. 38), **ss. 55(7)**, 93; S.I. 2004/690, art. 3(h); S.I. 2004/999, art. 2(m)
- F50** Words in s. 108(15) inserted (E.W.) (1.7.2012) by Protection of Freedoms Act 2012 (c. 9), s. 120, **Sch. 2 para. 3(3)** (with s. 97)
- F51** Words in s. 108(15) inserted (E.W.) (6.4.2016) by The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016 (S.I. 2016/475), reg. 1(2), **Sch. 3 para. 3(3)(d)(ii)** (with regs. 31-33)
- F52** Words in s. 108(15) 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)(g)
- F53** Words in s. 108(15) inserted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **10(2)(a)**
- F54** Words in s. 108(15) added (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 43(10)(a)**; S.S.I. 2014/160, art. 2(1)(2)
- F55** Words in s. 108(15) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 382(3)(b)(i)** (with Sch. 7)
- F56** Words in s. 108(15) repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), **ss. 46(2)(h)(ii)**, 61(2); S.S.I. 2014/160, art. 2(1)(2)
- F57** Words in s. 108(15) omitted (1.4.2006) by virtue of The Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 (S.S.I. 2006/181), **sch. Pt. 4 para. 8(4)**
- F58** Words in s. 108(15) repealed (26.2.2015) by The Regulatory Reform (Scotland) Act 2014 (Consequential Modifications) Order 2015 (S.I. 2015/374), arts. 1(1), **6(3)**
- F59** Words in s. 108(15) repealed (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. 13(5), **Sch. 28** (with reg. 1(2), Sch. 4)
- F60** S. 108(15): para. (n) in the definition of “pollution control functions” inserted (S.) (28.9.2000) by S.S.I. 2000/323, regs. 1(1), 36, **Sch. 10 para. 5(3)**
- F61** Words in s. 108(15) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 5(3)**; S.S.I. 2014/160, art. 2(1)(2)
- F62** Words in s. 108(15) inserted (S.) (1.4.2007 for specified purposes, 30.10.2007 in so far as not already in force) by The Radioactive Contaminated Land (Scotland) Regulations 2007 (S.S.I. 2007/179), reg. 1(1)(2), **16(a)**

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- F63** S. 108(15): words in definition of “pollution control functions” in relation to the Environment Agency inserted (E.W.) (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 16(b)**
- F64** Words in s. 108(15) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 382(3)(b)(ii)** (with Sch. 7)
- F65** Words in s. 108(15) inserted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **10(2)(b)**
- F66** Words in s. 108(15) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 382(3)(b)(iii)** (with Sch. 7)
- F67** Words in s. 108(15) inserted (31.3.2004 for W., 31.3.2004 for E.) by Anti-social Behaviour Act 2003 (c. 38), **ss. 55(8)**, 93; S.I. 2004/690, art. 3(h); S.I. 2004/999, art. 2(m)
- F68** Words in s. 108(15) inserted (E.W.) (1.7.2012) by Protection of Freedoms Act 2012 (c. 9), s. 120, **Sch. 2 para. 3(4)** (with s. 97)
- F69** Words in s. 108(15) substituted (E.W.) (18.10.2005 for E., 16.3.2006 for W.) by Clean Neighbourhoods and Environment Act 2005 (c. 16), **ss. 53**, 108(1)(2); S.I. 2005/2896, art. 3(h); S.I. 2006/768, art. 2(b)
- F70** Words in s. 108(15) inserted (S.) (1.4.2007 for specified purposes, 30.10.2007 in so far as not already in force) by The Radioactive Contaminated Land (Scotland) Regulations 2007 (S.S.I. 2007/179), reg. 1(1)(2), **16(b)**
- F71** S. 108(15): words in definition of “pollution control functions” in relation to a local enforcing authority inserted (E.W.) (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 16(c)**
- F72** Words in s. 108(15) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 43(10)(b)**; S.S.I. 2014/160, art. 2(1)(2)
- F73** Words in s. 108(15) inserted (31.3.2004 for W., 31.3.2004 for E.) by Anti-social Behaviour Act 2003 (c. 38), **ss. 55(9)**, 93; S.I. 2004/690, art. 3(h); S.I. 2004/999, art. 2(m)

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

- C4** S. 108 applied (with modifications) (1.4.1999) by S.I. 1999/743, **art. 20(4)**
- C5** S. 108 excluded by 1991 c. 57, **s. 172(3A)** (as added (1.4.1996) by 1995 c. 25, **Sch. 22 para. 166**; S.I. 1996/186, **art. 3**)
- C6** S. 108 restricted (21.4.2005) by The Greenhouse Gas Emissions Trading Scheme Regulations 2005 (S.I. 2005/925), **reg. 3(4)** (with reg. 3)
- C7** S. 108 extended (12.7.2007) by The Transfrontier Shipment of Waste Regulations 2007 (S.I. 2007/1711), reg. 1, **Sch. 5 para. 1** (with reg. 3)
- C8** S. 108 applied (E.) (1.3.2009) by The Environmental Damage (Prevention and Remediation) Regulations 2009 (S.I. 2009/153), regs. 1(1), **31(2)**
- C9** S. 108 applied by SI 2005/2773, reg. 7(4A) (as inserted (E.) (23.12.2009) by The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products (Amendment) (England) Regulations 2009 (S.I. 2009/3145), regs. 1, 2)
- C10** S. 108 extended (20.7.2011) by The Environmental Protection (Controls on Ozone-Depleting Substances) Regulations 2011 (S.I. 2011/1543), regs. 1(2), **8(3)** (with reg. 1(3))
- C11** S. 108 modified (24.3.2012) by The Bathing Water Regulations 2008 (S.I. 2008/1097), regs. 1(3)(e), **16(4)**
- C12** S. 108 applied (27.7.2012) by The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012 (S.I. 2012/1715), regs. 1, **6(2)** (with reg. 3)
- C13** S. 108 extended (7.3.2015) by The Ozone-Depleting Substances Regulations 2015 (S.I. 2015/168), regs. 1(2), **13(3)** (with reg. 12(7))
- C14** S. 108 applied (E.) (19.7.2015) by The Environmental Damage (Prevention and Remediation) (England) Regulations 2015 (S.I. 2015/810), regs. 1(1), **31(2)** (with regs. 4-8)
- C15** S. 108 applied (with modifications) (1.4.2018) by The Control of Mercury (Enforcement) Regulations 2017 (S.I. 2017/1200), regs. 2(2), **9(4)(5)** (with reg. 1(2))
- C16** S. 108 applied (with modifications) (1.4.2018) by The Control of Mercury (Enforcement) Regulations 2017 (S.I. 2017/1200), regs. 2(2), **27(3)** (with reg. 1(2))



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- C17** S. 108(4): power to appoint person to exercise powers conferred (27.7.1999) by 1999 c. 24, ss. 1, 2, **Sch. 1 Pt. 1 para. 14(2)**
- C18** S. 108(4) modified (16.12.2005) by The Producer Responsibility Obligations (Packaging Waste) Regulations 2005 (S.I. 2005/3468), regs. 1(1), **35(2)**
- C19** S. 108(4) modified (16.3.2007) by The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871), regs. 1(1), **35(2)**
- C20** S. 108(4)(a)-(l) applied (with modifications) (6.3.1997) by S.I. 1997/648, **reg. 28(2)**
- C21** S. 108(4)(a)-(l) applied (with modifications) (2.8.2004) by The Justification of Practices Involving Ionising Radiation Regulations 2004 (S.I. 2004/1769), reg. 1, Sch. 1 paras. 1, **2** (with reg. 2)
- C22** S. 108(6)(7) applied (with modifications) (6.3.1997) by S.I. 1997/648, **reg. 28(3)**
- C23** S. 108(6)(7) applied (with modifications) (16.12.2005) by The Producer Responsibility Obligations (Packaging Waste) Regulations 2005 (S.I. 2005/3468), regs. 1(1), **35(3)**
- C24** S. 108(6)(7) applied (with modifications) (16.3.2007) by The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871), regs. 1(1), **35(3)**
- C25** S. 108(12)(13) applied (6.3.1997) by S.I. 1997/648, **reg. 28(4)**
- C26** S. 108(12)(13) applied (16.12.2005) by The Producer Responsibility Obligations (Packaging Waste) Regulations 2005 (S.I. 2005/3468), regs. 1(1), **35(4)**
- C27** S. 108(12)(13) applied (16.3.2007) by The Producer Responsibility Obligations (Packaging Waste) Regulations 2007 (S.I. 2007/871), regs. 1(1), **35(4)**
- C28** S. 108(15) applied (E.W.) (27.6.2000) by S.I. 2000/1460, reg. 3, **Sch. 1 para. 9**
- C29** S. 108(15) modified (W.) (10.12.2006) by The Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006 (S.I. 2006/2988), regs. 1(2), **18**

#### Marginal Citations

- M25** 1911 c. 28.  
**M26** 1954 c. 32.  
**M27** 1990 c. 43.  
**M28** 1993 c. 12.  
**M29** 1989 c. 14.  
**M30** 1965 c. 13.  
**M31** 1906 c. 14.  
**M32** 1974 c. 40.  
**M33** 1990 c. 43.  
**M34** 1991 c. 56.  
**M35** 1991 c. 57.  
**M36** 1993 c. 11.  
**M37** 1972 c. 68.  
**M38** 1990 c. 43.  
**M39** 1972 c. 68.

#### [<sup>F74</sup>108A Procedure where documents removed

- (1) An authorised person (within the meaning of subsection (15) of section 108 of this Act) who removes any documents under the power in subsection (4)(ka) of that section shall, if requested to do so by a person mentioned in subsection (2) below, provide that person with a record of what the authorised person removed.
- (2) The persons are—
  - (a) a person who was the occupier of any premises from which the documents were removed at the time of their removal;
  - (b) a person who had possession or control of the documents immediately before they were removed.

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- (3) The authorised person shall provide the record within a reasonable time of the request for it.
- (4) A person who had possession or control of documents immediately before they were removed may apply to SEPA—
  - (a) for access to the documents; or
  - (b) for a copy of them.
- (5) SEPA shall—
  - (a) allow the applicant supervised access to the documents for the purpose of copying them or information contained in them; or
  - (b) copy the documents or information contained in them (or cause the documents or information to be copied) and provide the applicant with such copies within a reasonable time of the application.
- (6) But SEPA need not comply with subsection (5) above where it has reasonable grounds for believing that to do so might prejudice—
  - (a) any investigation for a purpose mentioned in paragraph (a), (d) or (e) of subsection (1) of section 108 of this Act; or
  - (b) any criminal proceedings which may be brought as a result of any such investigation.
- (7) In subsection (5) above, “supervised access” means access under the supervision of a person approved by SEPA.
- (8) A person who claims that an authorised person or SEPA has failed to comply with the requirements of subsection (1), (3) or (5) above may apply to the sheriff for an order under subsection (10) below.
- (9) An application under subsection (8) above—
  - (a) relating to a failure to comply with the requirements of subsection (1) or (3) above may be made only by a person who is entitled to make a request under subsection (1) above;
  - (b) relating to a failure to comply with subsection (5) above may be made only by a person who had possession or control of the documents immediately before they were removed.
- (10) The sheriff may, if satisfied that the authorised person or SEPA has failed to comply with the requirements of subsection (1), (3) or (5) above, order the person, or as the case may SEPA, to comply with the requirements within such time and in such manner as may be specified in the order.]

#### **Textual Amendments**

**F74** S. 108A inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), **ss. 46(3)**, 61(2); [S.S.I. 2014/160](#), art. 2(1)(2)

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

**C30** S. 108A applied (with modifications) (1.4.2018) by [The Control of Mercury \(Enforcement\) Regulations 2017 \(S.I. 2017/1200\)](#), regs. 2(2), **27(3)** (with reg. 1(2))

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## **109 Power to deal with cause of imminent danger of serious pollution etc.**

- (1) Where, in the case of any article or substance found by him on any premises which he has power to enter, an authorised person has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious pollution of the environment or serious harm to human health, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).
- (2) As soon as may be after any article or substance has been seized and rendered harmless under this section, the authorised person shall prepare and sign a written report giving particulars of the circumstances in which the article or substance 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 the article or substance was found by him; and
  - (b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;and if, where paragraph (b) above applies, the authorised person 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.
- (3) In this section, “authorised person” has the same meaning as in section 108 above.

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

- C31** S. 109 applied (with modifications) (1.4.2018) by [The Control of Mercury \(Enforcement\) Regulations 2017 \(S.I. 2017/1200\)](#), regs. 2(2), **9(4)(5)** (with reg. 1(2))
- C32** S. 109 applied (with modifications) (1.4.2018) by [The Control of Mercury \(Enforcement\) Regulations 2017 \(S.I. 2017/1200\)](#), regs. 2(2), **27(3)** (with reg. 1(2))

## **[<sup>F75</sup>109A] Power to issue restriction notices: England and Wales**

- (1) An authorised person may issue a restriction notice in relation to premises where there is, or was, a regulated facility or an exempt facility if the person is satisfied that the conditions in subsection (2) are met.
- (2) The conditions are that—
  - (a) there is a risk of serious pollution to the environment or serious harm to human health which is a result of the treatment, keeping, deposit or disposal of waste in or on the premises, and
  - (b) the notice is necessary to prevent that risk from continuing.
- (3) A restriction notice is a notice prohibiting access to, and the importation of waste into, the premises or a specified part of the premises.
- (4) But a restriction notice does not prohibit access to the premises, or the specified part of the premises, by the occupier or the owner.
- (5) A restriction notice has effect for a period specified in the notice, which may not exceed 72 hours.
- (6) Where a restriction notice is issued, the appropriate agency may do anything necessary to secure the premises against access in contravention of the notice.
- (7) A restriction notice may include provision for—

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- (a) persons, or a description of persons, to whom the prohibition in subsection (3) does not apply;
  - (b) times at which the prohibition in subsection (3) does not apply;
  - (c) circumstances in which the prohibition in subsection (3) does not apply.
- (8) Provision included in accordance with subsection (7) may be unconditional or subject to specified conditions.
- (9) A restriction notice must—
- (a) identify the premises, or part of the premises, to which the notice applies;
  - (b) explain the effect of the notice;
  - (c) state that failure to comply with the notice is an offence;
  - (d) state the penalties applicable to a person guilty of an offence;
  - (e) state that a restriction order will be applied for under section 109D;
  - (f) state that notice will be given of when and where the application for a restriction order will be heard;
  - (g) explain the effect of a restriction order.
- (10) Before issuing a restriction notice, the appropriate agency must make reasonable efforts—
- (a) to inform the occupier and the owner of the premises that the notice is going to be issued;
  - (b) to consult the occupier and the owner of the premises on the arrangements for access to the premises, or to the particular part of the premises, by persons acting on behalf of the occupier or the owner for any purpose, including—
    - (i) the purpose of maintaining machinery and apparatus;
    - (ii) the purpose of securing the premises.

#### Textual Amendments

**F75** Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

### 109B. Cancellation or variation of restriction notices

Where a restriction notice is in force and the authorised person is no longer satisfied that the conditions in section 109A(2) are met—

- (a) as regards the premises as a whole, the authorised person must issue a notice cancelling the restriction notice (a “cancellation notice”);
- (b) as regards a particular part of the premises, the authorised person must issue a notice varying the restriction notice so that it does not apply to that part of the premises (a “variation notice”).

#### Textual Amendments

**F75** Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

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### 109C. Service of restriction notices etc.

- (1) A restriction notice, a cancellation notice or a variation notice must be served by an authorised person.
- (2) The authorised person must make reasonable efforts to—
  - (a) fix a copy of the notice to each normal means of access to the premises;
  - (b) give a copy of the notice to the occupier and the owner of the premises;
  - (c) give a copy of the notice to the occupier and the owner of any other premises to which the authorised person believes access will be impeded by the restriction notice.
- (3) In subsection (1), “cancellation notice” and “variation notice” have the meanings given by section 109B.

#### Textual Amendments

**F75** Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), [Sch. 2 para. 3](#) (with reg. 4(1))

### 109D. Power of court to make restriction orders: England and Wales

- (1) An application to a magistrates’ court for a restriction order—
  - (a) must be made by the appropriate agency when it has issued a restriction notice (unless the notice has been cancelled);
  - (b) may otherwise be made by the appropriate agency at any time.
- (2) The application must be heard by the magistrates’ court—
  - (a) where subsection (1)(a) applies, not later than 72 hours after service of the restriction notice;
  - (b) where subsection (1)(b) applies, not later than 7 days after the application is made.
- (3) Where an application is made under subsection (1), the appropriate agency must serve a notice stating the date, time and place of the hearing of the application on—
  - (a) the occupier and the owner of the premises;
  - (b) the occupier and the owner of any other premises to which the appropriate agency believes access will be impeded if a restriction order is made.
- (4) The court may make a restriction order in relation to premises where there is, or was, a regulated facility or an exempt facility if the court is satisfied that the conditions in subsection (5) or (6) are met.
- (5) The conditions are that—
  - (a) there is a risk of serious pollution to the environment or serious harm to human health which is a result of the treatment, keeping, deposit or disposal of waste in or on the premises, and
  - (b) the order is necessary to prevent that risk from continuing.
- (6) The conditions are that—
  - (a) in relation to the treatment, keeping, deposit or disposal of waste in or on the premises, a person has—

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- (i) contravened section 33(1) of the Environmental Protection Act 1990,
  - (ii) contravened regulation 12(1) of the Environmental Permitting Regulations or knowingly caused or knowingly permitted the contravention of regulation 12(1)(a) of those Regulations,
  - (iii) contravened or failed to comply with an environmental permit condition, or
  - (iv) failed to comply with the requirements of an enforcement notice, a landfill closure notice, a mining waste facility closure notice, a suspension notice, or a notice served under section 59, 59ZA, 59ZB or 59ZC of the Environmental Protection Act 1990,
- (b) the conduct referred to in paragraph (a) has caused, is causing or has failed to prevent from continuing—
- (i) pollution to the environment, or
  - (ii) harm to human health, and
- (c) the order is necessary to prevent that pollution or harm from continuing.
- (7) A restriction order is an order prohibiting access to, and the importation of waste into, the premises or a specified part of the premises.
- (8) A restriction order has effect for a period specified in the order, which may not exceed 6 months.
- (9) A restriction order may include provision for—
- (a) persons, or a description of persons, to whom the prohibition in subsection (7) does not apply;
  - (b) times at which the prohibition in subsection (7) does not apply;
  - (c) circumstances in which the prohibition in subsection (7) does not apply.
- (10) Provision included in accordance with subsection (9) may be unconditional or subject to specified conditions.
- (11) A restriction order may include provision about access to other premises where that access could otherwise be impeded by the order.
- (12) A restriction order must—
- (a) identify the premises, or part of the premises, to which the order applies;
  - (b) explain the effect of the order;
  - (c) state that failure to comply with the order is an offence;
  - (d) state that the removal of a copy of a restriction order fixed to a normal means of access to the premises is an offence;
  - (e) state the penalties applicable to a person guilty of an offence.
- (13) The restriction notice referred to in subsection (1)(a) ceases to have effect—
- (a) on the making of a restriction order, or
  - (b) where the court decides not to make a restriction order, on the making of that decision, unless the court makes an order in accordance with section 109E(4).
- (14) In subsection (6)(a)(iii) and (iv), “enforcement notice”, “environmental permit condition”, “landfill closure notice”, “mining waste facility closure notice” and “suspension notice” have the meanings given in regulation 2(1) of the Environmental Permitting Regulations.

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#### Textual Amendments

**F75** Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

### 109E. Temporary orders

- (1) This section applies where an application has been made to a magistrates' court under section 109D(1)(a) for a restriction order.
- (2) The court may adjourn the hearing of the application for a period of not more than 14 days to enable—
  - (a) the appropriate agency to show why a restriction order should be made;
  - (b) the occupier or the owner of the premises to show why a restriction order should not be made.
- (3) If the court adjourns the hearing, the restriction notice continues in force until the court has determined the application.
- (4) If the court does not make a restriction order it may nevertheless order that the restriction notice continues in force for a specified further period of not more than 72 hours if it is satisfied that—
  - (a) there is a risk of serious pollution to the environment or serious harm to human health which is a result of the treatment, keeping, deposit or disposal of waste in or on the premises, and
  - (b) the notice is necessary to prevent that risk from continuing.

#### Textual Amendments

**F75** Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

### 109F. Extension of restriction orders

- (1) At any time before the expiry of a restriction order, the appropriate agency may apply to a justice of the peace, by complaint, for an extension (or further extension) of the period for which the order is in force.
- (2) Where an application is made under this section, the justice of the peace may issue a summons directed to one or both of the occupier and the owner of the premises, requiring the person to appear before the magistrates' court to respond to the application.
- (3) If a summons is issued under subsection (2), a notice stating the date, time and place of the hearing of the application must be served on the persons to whom the summons is directed.
- (4) The court may make an order extending (or further extending) the period of the restriction order by a period not exceeding 6 months where satisfied that the conditions in section 109D(5) or (6) are met.

*Status: Point in time view as at 01/04/2019.*

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#### Textual Amendments

**F75** Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

### 109G. Variation or discharge of restriction orders

- (1) At any time before the expiry of a restriction order, an application may be made to a justice of the peace, by complaint, for the order to be varied or discharged.
- (2) Those entitled to make an application under this section are—
  - (a) the appropriate agency that applied for the restriction order;
  - (b) the occupier of the premises subject to the order;
  - (c) the owner of the premises subject to the order.
- (3) Where the appropriate agency makes an application under this section, the justice of the peace may issue a summons directed to one or both of the occupier and the owner of the premises, requiring the person to appear before the magistrates' court to respond to the application.
- (4) Where the occupier or the owner of the premises makes an application under this section, the justice of the peace must—
  - (a) issue a summons directed to the appropriate agency that applied for the restriction order requiring it to appear before the magistrates' court to respond to the application, or
  - (b) dismiss the application.
- (5) If a summons is issued under subsection (3) or (4), a notice stating the date, time and place of the hearing of the application must be served on—
  - (a) the appropriate agency that applied for the restriction order (other than where the agency is the complainant);
  - (b) the occupier or the owner of the premises (other than the complainant).
- (6) The magistrates' court may make an order varying or discharging the restriction order if it is no longer satisfied that the conditions in section 109D(5) or (6) are met in respect of all or part of the premises (or the part of the premises) to which the restriction order applies.

#### Textual Amendments

**F75** Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

### 109H. Enforcement of restriction orders

- (1) The appropriate agency must make reasonable efforts to fix a copy of the restriction order to each normal means of access to the premises.
- (2) Where a restriction order has been made, an authorised person may do anything necessary to secure the premises against access in contravention of the order.



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#### Textual Amendments

**F75** Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

### 109I. Appeals against decisions on restriction orders

- (1) The occupier or the owner of the premises may appeal against—
  - (a) a decision to make or extend a restriction order;
  - (b) a decision made under section 109G in relation to an application to vary or discharge a restriction order.
- (2) The appropriate agency may appeal against—
  - (a) a decision not to order the continuation in force of a restriction notice (under section 109E);
  - (b) a decision not to make a restriction order;
  - (c) a decision not to extend a restriction order;
  - (d) a decision made in relation to an application to vary or discharge a restriction order (under section 109G).
- (3) An appeal under this section is to the Crown Court.
- (4) An appeal under this section must be made within 21 days beginning with the date of the decision to which it relates.
- (5) On an appeal under this section the Crown Court may make whatever order it thinks appropriate.
- (6) Pending the determination of an appeal under this section, the decision being appealed remains in force.

#### Textual Amendments

**F75** Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

### 109J. Access to other premises

- (1) Where—
  - (a) access to premises is prohibited or restricted by an order under section 109D, 109E, 109F, 109G or 109I, and
  - (b) there are other premises to which access is impeded by that order,an occupier or owner of those other premises may apply to the appropriate court for an order under this section.
- (2) The appropriate court is—
  - (a) the magistrates' court, in the case of an order under section 109D, 109E, 109F or 109G;
  - (b) the Crown Court, in the case of an order under section 109I.
- (3) Notice of an application under this section must be given to—

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- (a) the appropriate agency that applied for the restriction order;
  - (b) the occupier and the owner of the premises subject to the order.
- (4) On an application under this section the court may make whatever order it thinks appropriate in relation to access to the other premises, whether or not provision has been made under section 109D(11).

#### Textual Amendments

**F75** Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

### 109K. Recovery of costs

- (1) An appropriate agency that incurs expenditure for the purpose of securing premises in respect of which a restriction notice was issued is entitled to recover that expenditure from the occupier or the owner of the premises, except such of that expenditure as the occupier or the owner shows was incurred unnecessarily.
- (2) An appropriate agency that incurs expenditure for the purpose of securing premises in respect of which a restriction order is in force may apply to the court that made the restriction order for an order under subsection (3).
- (3) On an application under this section, the court may make whatever order it thinks appropriate for the reimbursement (in full or in part) by the occupier or the owner of the premises of—
  - (a) the expenditure mentioned in subsection (2);
  - (b) any expenditure incurred by the appropriate agency for the purpose of securing the premises in respect of which a restriction notice (including a notice continued in force under section 109E) was issued, except such of that expenditure as has been recovered in accordance with subsection (1).
- (4) An application for an order under this section may not be heard unless it is made within 3 months beginning with the day on which the restriction order ceases to have effect.
- (5) An order under this section may be made only against a person who has been served with the application for the order.

#### Textual Amendments

**F75** Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

### 109L. Exemption from liability

- (1) The appropriate agency is not liable for damages arising out of anything done or omitted to be done by the appropriate agency in the exercise or purported exercise of a power under sections 109A to 109D, 109F to 109I and 109K in proceedings for—
  - (a) judicial review, or
  - (b) the tort of negligence or misfeasance in public office.
- (2) Subsection (1) does not apply to an act or omission shown to have been in bad faith.

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- (3) Subsection (1) does not apply so as to prevent an award of damages made 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

**F75** Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

### 109M. Compensation

- (1) Where the occupier or the owner of any premises to which access was impeded by a restriction notice or order (other than the premises which is subject to a restriction notice or order) claims to have incurred financial loss in consequence of that notice or order, that person may apply to the appropriate court for compensation.
- (2) The appropriate court is—
  - (a) the magistrates' court (except where paragraph (b) applies);
  - (b) the Crown Court, in the case of a restriction order that was made or extended by an order of that Court on an appeal under section 109I.
- (3) An application under this section may not be heard unless it is made within 3 months beginning with whichever of the following is applicable—
  - (a) the day on which the restriction notice was cancelled under section 109B;
  - (b) the day on which a restriction order was refused;
  - (c) the day on which the restriction order ceased to have effect.
- (4) For the purposes of subsection (3)(b) the day on which a restriction order was refused is—
  - (a) the day on which the magistrates' court decided not to make a restriction order (except where paragraph (b) applies);
  - (b) the day on which the Crown Court dismissed an appeal against a decision not to make a restriction order.
- (5) On an application under this section the court may order the payment of compensation by the appropriate agency if it is satisfied—
  - (a) that the applicant has incurred financial loss in consequence of the notice or order, and
  - (b) that having regard to all the circumstances it is appropriate to order payment of compensation in respect of that loss.

#### Textual Amendments

**F75** Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

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## 109N. Interpretation

(1) In sections 109A to 109M and this section—

“appropriate agency” means the Agency or the Natural Resources Body for Wales;

“authorised person” means a person who is authorised by the appropriate agency under section 108;

“the Environmental Permitting Regulations” means the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154);

“exempt facility” has the meaning given in regulation 5 of the Environmental Permitting Regulations;

“occupier”, in relation to premises, includes a person who habitually lives on the premises;

“owner”, in relation to premises consisting of land, 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;

“premises” means premises in England or Wales, and includes any land, vehicle, vessel or mobile plant;

“regulated facility” has the meaning given in regulation 8 of the Environmental Permitting Regulations;

“restriction notice” has the meaning given by section 109A(3);

“restriction order” has the meaning given by section 109D(7);

“waste” has the same meaning as in section 75 of the Environmental Protection Act 1990.

(2) In calculating for the purposes of sections 109A(5), 109D(2) and 109E(4) when a period of 72 hours or 7 days ends, the following days are to be disregarded—

- (a) Good Friday;
- (b) Christmas Day;
- (c) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971.]

### Textual Amendments

**F75** Ss. 109A-109N inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 3** (with reg. 4(1))

## 110 Offences.

(1) It is an offence for a person intentionally to obstruct an authorised person in the exercise or performance of his powers or duties.

(2) It is an offence for a person, without reasonable excuse,—

- (a) to fail to comply with any requirement imposed under section 108 above;
- (b) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an authorised person in the execution of his powers or duties under or by virtue of that section; or

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- (c) to prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer, pursuant to subsection (4) of that section.
- (3) It is an offence for a person falsely to pretend to be an authorised person.
- [<sup>F76</sup>(3A) It is an offence for a person to contravene, without reasonable excuse, a restriction notice issued under section 109A (including a notice continued in force under section 109E).
- (3B) It is an offence for a person to contravene, without reasonable excuse, a restriction order made under section 109D, 109F, 109G or 109I.
- (3C) It is an offence for a person to remove, without reasonable excuse, a copy of a restriction order fixed to a normal means of access to premises under section 109H(1).]
- (4) A person guilty of an offence under subsection (1) above shall be liable—
- (a) in the case of an offence of [<sup>F77</sup>assaulting, hindering or] obstructing an authorised person in the execution of his powers under section 109 above—
    - (i) on summary conviction, to a fine not exceeding the statutory maximum [<sup>F78</sup>or to imprisonment for a term not exceeding 12 months, or to both];
    - (ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both;
  - (b) in any other case, on summary conviction, to a fine not exceeding [<sup>F79</sup>level 5 on the standard scale][<sup>F79</sup>the prescribed sum within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 or to imprisonment for a term not exceeding 12 months, or to both].
- (5) A person guilty of an offence under subsection (2) or (3) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- [<sup>F80</sup>(5A) A person may be convicted of the offence under subsection (1) above of hindering or obstructing even though it is—
- (a) effected by means other than physical means, or
  - (b) effected by action directed only at any vehicle, apparatus, equipment or other thing used or to be used by an authorised person.
- (5B) Subsection (5C) applies where, in the trial of a person (“the accused”) charged in summary proceedings with an offence under subsection (1) above, the court—
- (a) is not satisfied that the accused committed the offence, but
  - (b) is satisfied that the accused committed an offence under subsection (2) above.
- (5C) The court may acquit the accused of the charge and, instead, find the accused guilty of an offence under subsection (2) above.]
- [<sup>F81</sup>(5D) A person guilty of an offence under subsection (3A) is liable on summary conviction to a fine or to imprisonment for a period not exceeding 51 weeks, or to both.
- (5E) A person guilty of an offence under subsection (3B) is liable—
- (a) on summary conviction, to a fine or to imprisonment for a period not exceeding 12 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.

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- (5F) A person guilty of an offence under subsection (3C) is liable on summary conviction to a fine.
- (5G) In relation to an offence committed before the coming into force of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (5D) to 51 weeks is to be read as a reference to 6 months.
- (5H) In relation to an offence committed before the coming into force of section 154(1) of the Criminal Justice Act 2003, the reference in subsection (5E)(a) to 12 months is to be read as a reference to 6 months.]
- (6) In this section—
- “authorised person” means a person authorised under section 108 above and includes a person designated under paragraph 2 of Schedule 18 to this Act;
- “powers and duties” includes powers or duties exercisable by virtue of a warrant under Schedule 18 to this Act.

#### Textual Amendments

- F76** S. 110(3A)-(3C) inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 4(a)**
- F77** Words in s. 110(4)(a) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), **sch. 3 para. 29(6)(b)(i)** (with sch. 3 para. 30); S.S.I. 2014/160, art. 2(1)(2)
- F78** Words in s. 110(4)(a)(i) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), **sch. 3 para. 29(6)(b)(ii)** (with sch. 3 para. 30); S.S.I. 2014/160, art. 2(1)(2)
- F79** Words in s. 110(4)(b) substituted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), **sch. 3 para. 29(6)(b)(iii)** (with sch. 3 para. 30); S.S.I. 2014/160, art. 2(1)(2)
- F80** S. 110(5A)-(5C) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), **sch. 3 para. 29(6)(c)**; S.S.I. 2014/160, art. 2(1)(2)
- F81** S. 110(5D)-(5H) inserted (E.W.) (29.3.2018) by [The Waste Enforcement \(England and Wales\) Regulations 2018 \(S.I. 2018/369\)](#), reg. 1(2), **Sch. 2 para. 4(b)**

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

- C33** S. 110 applied by [S.I. 2005/2773, reg. 7\(4A\)](#) (as inserted (E.) (23.12.2009) by [The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products \(Amendment\) \(England\) Regulations 2009 \(S.I. 2009/3145\)](#), regs. 1, 2)
- C34** S. 110 applied (27.7.2012) by [The Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2012 \(S.I. 2012/1715\)](#), regs. 1, **6(2)** (with reg. 3)
- C35** S. 110 applied (with modifications) (1.4.2018) by [The Control of Mercury \(Enforcement\) Regulations 2017 \(S.I. 2017/1200\)](#), regs. 2(2), **27(3)** (with reg. 1(2))
- C36** S. 110 applied (with modifications) (1.4.2018) by [The Control of Mercury \(Enforcement\) Regulations 2017 \(S.I. 2017/1200\)](#), regs. 2(2), **9(4)(5)** (with reg. 1(2))

### *Evidence*

#### 111 Evidence in connection with certain pollution offences.

<sup>F82</sup>(1) . . . . .

- (2) Information provided or obtained pursuant to or by virtue of a condition of a relevant licence (including information so provided or obtained, or recorded, by means of any

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apparatus) shall be admissible in evidence in any proceedings, whether against the person subject to the condition or any other person.

[<sup>F83</sup>(2A) Information provided or obtained pursuant to or by virtue of relevant regulations (including information so provided or obtained, or recorded, by means of any apparatus) shall be admissible in evidence in any proceedings, whether against the person subject to a requirement arising under or by virtue of the regulations or any other person.]

(3) For the purposes of [<sup>F84</sup>subsections (2) and (2A)] above, apparatus shall be presumed in any proceedings to register or record accurately, unless the contrary is shown or [<sup>F85</sup>provision otherwise is made by the relevant licence or by virtue of the relevant regulations].

(4) Where—

- (a) by virtue of a condition of a relevant licence [<sup>F86</sup>or by virtue of relevant regulations], an entry is required to be made in any record as to the observance of any condition of the relevant licence [<sup>F87</sup>or compliance with any requirement arising under or by virtue of the regulations], and
- (b) the entry has not been made,

that fact shall be admissible in any proceedings as evidence that that condition has not been observed [<sup>F88</sup>or that requirement has not been complied with].

(5) In this section—

“apparatus” includes any meter or other device for measuring, assessing, determining, recording or enabling to be recorded, the volume, temperature, radioactivity, rate, nature, origin, composition or effect of any substance, flow, discharge, emission, deposit or abstraction;

“condition of a relevant licence” includes any requirement to which a person is subject under, by virtue of or in consequence of a relevant licence;

“environmental licence” has the same meaning as it has in Part I above as it applies in relation to the Agency [<sup>F89</sup>, the Natural Resources Body for Wales] or SEPA, as the case may be;

“relevant licence” means—

- (a) any environmental licence;
- (b) any consent under Part II of the <sup>M40</sup>Sewerage (Scotland) Act 1968 to make discharges of trade effluent;
- (c) any agreement under section 37 of that Act with respect to, or to any matter connected with, the reception, treatment or disposal of such effluent;
- (d) any consent under Chapter III of Part IV of the <sup>M41</sup>Water Industry Act 1991 to make discharges of special category effluent; or
- (e) any agreement under section 129 of that Act with respect to, or to any matter connected with, the reception or disposal of such effluent.

[<sup>F90</sup>“relevant regulations” means regulations made for the purpose of implementing the EU ETS Directive (as defined by section 56)].

(6) [<sup>F91</sup>In section 25 of the Environmental Protection Act, after subsection (2) (which makes similar provision to subsection (4) above) there shall be inserted—

- “(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,

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within the meaning of section 111 of the Environment Act 1995 (which makes corresponding provision in relation to such licences).”]

#### Textual Amendments

- F82** S. 111(1) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 13](#)
- F83** S. 111(2A) inserted (3.12.2012) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Charging Schemes\) Regulations 2012 \(S.I. 2012/2788\)](#), regs. 1, [8\(2\)](#)
- F84** Words in s. 111(3) substituted (3.12.2012) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Charging Schemes\) Regulations 2012 \(S.I. 2012/2788\)](#), regs. 1, [8\(3\)\(a\)](#)
- F85** Words in s. 111(3) substituted (3.12.2012) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Charging Schemes\) Regulations 2012 \(S.I. 2012/2788\)](#), regs. 1, [8\(3\)\(b\)](#)
- F86** Words in s. 111(4)(a) inserted (3.12.2012) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Charging Schemes\) Regulations 2012 \(S.I. 2012/2788\)](#), regs. 1, [8\(4\)\(a\)\(i\)](#)
- F87** Words in s. 111(4)(a) inserted (3.12.2012) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Charging Schemes\) Regulations 2012 \(S.I. 2012/2788\)](#), regs. 1, [8\(4\)\(a\)\(ii\)](#)
- F88** Words in s. 111(4)(b) inserted (3.12.2012) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Charging Schemes\) Regulations 2012 \(S.I. 2012/2788\)](#), regs. 1, [8\(4\)\(b\)](#)
- F89** Words in s. 111(5) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 383](#) (with Sch. 7)
- F90** Words in s. 111(5) inserted (3.12.2012) by [The Greenhouse Gas Emissions Trading Scheme \(Amendment\) \(Charging Schemes\) Regulations 2012 \(S.I. 2012/2788\)](#), regs. 1, [8\(5\)](#)
- F91** S. 111(6) repealed (1.4.2015 for S.) by [Pollution Prevention and Control Act 1999 \(c. 24\)](#), s. 7(3), [Sch. 3](#); S.S.I. 2015/139, art. 3(a)

#### Marginal Citations

- M40** 1968 c. 47.  
**M41** 1991 c. 56.

### *Offences*

#### **112 Amendment of certain offences relating to false or misleading statements or false entries.**

Schedule 19 to this Act shall have effect.

### *Information*

#### **113 Disclosure of information.**

- (1) Notwithstanding any prohibition or restriction imposed by or under any enactment or rule of law, information of any description may be disclosed—
- (a) by [<sup>F92</sup>a relevant agency] to a Minister of the Crown, [<sup>F93</sup>another relevant agency] or a local enforcing authority,
  - (b) by a Minister of the Crown to [<sup>F92</sup>a relevant agency], another Minister of the Crown or a local enforcing authority, <sup>F94</sup>...
  - (c) by a local enforcing authority to a Minister of the Crown, [<sup>F92</sup>a relevant agency] or another local enforcing authority, [<sup>F95</sup>or
  - (d) by the Natural Resources Body for Wales to the Forestry Commissioners [<sup>F96</sup>or the Scottish Ministers],]



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for the purpose of facilitating the carrying out by [<sup>F97</sup>any of the relevant agencies] of any of its functions, by any such Minister of any of his environmental functions or by any local enforcing authority of any of its relevant functions; and no person shall be subject to any civil or criminal liability in consequence of any disclosure made by virtue of this subsection.

[<sup>F98</sup>(1A) Nothing in this section authorises the disclosure by SEPA to any person of protected taxpayer information which was obtained by SEPA in connection with a function of Revenue Scotland delegated to it by Revenue Scotland under section 4(1)(b) of the Revenue Scotland and Tax Powers Act 2014 (asp 16).]

(2) Nothing in this section shall authorise the disclosure to a local enforcing authority by a [<sup>F99</sup>relevant agency] or another local enforcing authority of information—

- (a) disclosure of which would, in the opinion of a Minister of the Crown, be contrary to the interests of national security; or
- (b) which was obtained under or by virtue of the <sup>M42</sup>Statistics of Trade Act 1947 and which was disclosed to a [<sup>F99</sup>relevant agency] or any of its officers by the Secretary of State.

(3) No information disclosed to any person under or by virtue of this section shall be disclosed by that person to any other person otherwise than in accordance with the provisions of this section, or any provision of any other enactment which authorises or requires the disclosure, if that information is information—

- (a) which relates to a trade secret of any person or which otherwise is or might be commercially confidential in relation to any person; or
- (b) whose disclosure otherwise than under or by virtue of this section would, in the opinion of a Minister of the Crown, be contrary to the interests of national security.

(4) Any authorisation by or under this section of the disclosure of information by or to any person shall also be taken to authorise the disclosure of that information by or, as the case may be, to any officer of his who is authorised by him to make the disclosure or, as the case may be, to receive the information.

(5) In this section—

<sup>F100</sup> ...

[<sup>F101</sup>“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

[<sup>F102</sup>“the environment” means 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);]

“environmental functions”, in relation to a Minister of the Crown, means any function of that Minister, whether conferred or imposed under or by virtue of any enactment or otherwise, relating to the environment; and

“local enforcing authority” means—

- (a) any local authority within the meaning of Part IIA of the Environmental Protection Act 1990, and the “relevant functions” of such an authority are its functions under or by virtue of that Part;
- (aa) in relation to England and Wales, any local authority within the meaning of regulations under section 2 of the Pollution Prevention and Control Act 1999 [<sup>F103</sup>or regulations under section 61 of the Water Act 2014] ;

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- (b) any local authority within the meaning of Part IV of this Act, and the “relevant functions” of such an authority are its functions under or by virtue of that Part; <sup>[F104]</sup>or]
  - (c) in relation to England, any county council for an area for which there are district councils, and the “relevant functions” of such a county council are its functions under or by virtue of Part IV of this Act; <sup>[F105]</sup>or
  - (d) in relation to England and Wales, any local enforcing authority within the meaning of section 1(7) of the Environmental Protection Act 1990, and the “relevant functions” of such an authority are its functions under or by virtue of Part I of that Act.]
- <sup>[F106]</sup>“protected taxpayer information” has the meaning given by section 14 of the Revenue Scotland and Tax Powers Act 2014 (asp 16),]
- <sup>[F107]</sup>“relevant agency” means the Agency, the Natural Resources Body for Wales or SEPA.]

#### Textual Amendments

- F92** Words in s. 113(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 384(2)(a)** (with Sch. 7)
- F93** Words in s. 113(1)(a) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 384(2)(b)** (with Sch. 7)
- F94** Word in s. 113(1)(b) omitted (1.4.2013) by virtue of The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 384(2)(c)** (with Sch. 7)
- F95** S. 113(1)(d) and word inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 384(2)(d)** (with Sch. 7)
- F96** Words in s. 113(1)(d) inserted (1.4.2019) by The Forestry and Land Management (Scotland) Act 2018 (Consequential Provisions and Modifications) Order 2019 (S.I. 2019/734), reg. 1(2), **Sch. para. 56**; S.S.I. 2019/47, reg. 2
- F97** Words in s. 113(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 384(2)(e)** (with Sch. 7)
- F98** S. 113(1A) inserted (S.) (1.1.2015) by Revenue Scotland and Tax Powers Act 2014 (asp 16), s. 260(2), **sch. 4 para. 2(3)(a)** (with ss. 257-259); S.S.I. 2014/370, art. 2
- F99** Words in s. 113(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 384(3)** (with Sch. 7)
- F100** Words in s. 113(5) omitted (1.4.2013) by virtue of The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 384(4)(a)** (with Sch. 7)
- F101** Words in s. 113(5) inserted (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), **sch. 3 para. 43(11)**; S.S.I. 2014/160, art. 2(1)(2)
- F102** S. 113(5): definition of “the environment” substituted (21.3.2000 (E.W.) and 29.9.2000 (S.)) by 1999 c. 24, s. 6(1), **Sch. 2 para. 18(2)**; S.I. 2000/800, **art. 2**; S.S.I. 2000/322, **art. 2**
- F103** Words in s. 113(5) inserted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **10(3)**
- F104** S. 113(5): word at end of para. (b) in definition of “local enforcing authority” inserted (21.3.2000 (E.W.) and 29.9.2000 (S.)) by 1999 c. 24, s. 6(1), **Sch. 2 para. 18(3)**; S.I. 2000/800, **art. 2**; S.S.I. 2000/322, **art. 2**
- F105** Words in s. 113(5) repealed (1.4.2015 for S.) by Pollution Prevention and Control Act 1999 (c. 24), s. 7(3), **Sch. 3**; S.S.I. 2015/139, art. 3(b)
- F106** Words in s. 113(5) inserted (S.) (1.1.2015) by Revenue Scotland and Tax Powers Act 2014 (asp 16), s. 260(2), **sch. 4 para. 2(3)(b)** (with ss. 257-259); S.S.I. 2014/370, art. 2
- F107** Words in s. 113(5) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 384(4)(b)** (with Sch. 7)

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

**C37** S. 113 functions made exercisable concurrently (8.5.2017) by [The West Midlands Combined Authority \(Functions and Amendment\) Order 2017 \(S.I. 2017/510\)](#), arts. 1(2), **17**

**C38** S. 113(2)(3): certain functions made exercisable by the Scottish Ministers concurrently with the Minister concerned (1.7.1999) by [S.I. 1999/1750](#), arts. 1, 3, **Sch. 2** (with art. 7); [S.I. 1998/3178](#), **art. 3**

**Marginal Citations**

**M42** 1947 c. 39.

*Appeals*

**114 Power of Secretary of State to delegate his functions of determining, or to refer matters involved in, appeals.**

- (1) The Secretary of State may—
- (a) appoint any person to exercise on his behalf, with or without payment, any function to which this paragraph applies; or
  - (b) refer any item to which this paragraph applies to such person as the Secretary of State may appoint for the purpose, with or without payment.
- (2) The functions to which paragraph (a) of subsection (1) above applies are any of the Secretary of State's functions of determining—
- (a) an appeal under—
    - <sup>F108</sup>(i) section 42B(5) of the Control of Pollution Act 1974,]
    - (ii) section 4 of the <sup>M43</sup>Control of Pollution (Amendment) Act 1989,
    - (iii) section [<sup>F109</sup>15, 22(5),]<sup>F110</sup> ..., 62(3)(c), <sup>F110</sup> ..., 78L or 78T of the <sup>M44</sup>Environmental Protection Act 1990,
    - <sup>F111</sup>(iv) paragraph 2 or paragraph 3(3) of Schedule 6 to the <sup>M45</sup>Natural Heritage (Scotland) Act 1991,]
    - (v) section [<sup>F112</sup> 36A,] 43, [<sup>F113</sup>51,]<sup>F114</sup> ... 92, 96, 161C or 191B(5) of the <sup>M46</sup>Water Resources Act 1991,
    - <sup>F115</sup>(vi) .....
    - <sup>F116</sup>(vii) [<sup>F117</sup>paragraph 6 of Schedule 5 to the Waste Management Licensing (Scotland) Regulations 2011,]
    - (viii) regulations under section 2 of the Pollution Prevention and Control Act 1999 extending to Scotland<sup>F118</sup>, under section 61 of the Water Act 2014 extending to Scotland] or under section 18 of the Regulatory Reform (Scotland) Act 2014,
    - (viii) regulations under section 2 of the Pollution Prevention and Control Act 1999 extending to England and Wales [<sup>F118</sup>or regulations under section 61 of the Water Act 2014 extending to England and Wales],
    - <sup>F119</sup>(ix) section 3 of the Water Act 2003,]
    - <sup>F120</sup>(ix) regulations under section 20 (regulation of controlled activities) of the [Water Environment and Water Services \(Scotland\) Act 2003 \(asp 3\)](#),]
  - or any matter involved in such an appeal;
  - <sup>F121</sup>(b) the questions, or any of the questions, which fall to be determined by the Secretary of State under section 39(1) or section 49(4) of the <sup>M47</sup>Control of Pollution Act 1974.]

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- (3) The items to which paragraph (b) of subsection (1) above applies are—
- (a) any matter involved in an appeal falling within subsection (2)(a) above;
  - (b) [<sup>F122</sup>any of the questions which fall to be determined by the Secretary of State under section 39(1) or section 49(4) of the Control of Pollution Act 1974.]
- (4) Schedule 20 to this Act shall have effect with respect to appointments under subsection (1)(a) above.

### Textual Amendments

- F108** S. 114(2)(a)(i) substituted (1.4.2006) by [The Water Environment \(Consequential and Savings Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/181\)](#), **sch. Pt. 4 para. 8(5)(a)**
- F109** Words in s. 114(2)(a)(iii) repealed (1.4.2015 for S.) by [Pollution Prevention and Control Act 1999 \(c. 24\)](#), s. 7(3), **Sch. 3**; S.S.I. 2015/139, art. 3(c)
- F110** Words in s. 114(2)(a)(iii) repealed (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), reg. 1(1)(b), **Sch. 23** (with reg. 72, Sch. 4)
- F111** S. 114(2)(a)(iv) omitted (S.) (1.4.2006) by virtue of [The Water Environment \(Consequential and Savings Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/181\)](#), **sch. Pt. 4 para. 8(5)(b)**
- F112** Word in s. 114(2)(a)(v) inserted (E.W.) (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 13(4)**, 105(3); S.I. 2006/984, art. 2(h) (with [Sch. para. 7](#))
- F113** Word in s. 114(2)(a)(v) inserted (E.W.) (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 21(4)**, 105(3) (with s. 21(5)); S.I. 2006/984, art. 2(k)
- F114** Word in s. 114(2)(a)(v) repealed (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. 13(6)(a), **Sch. 28** (with reg. 1(2), Sch. 4)
- F115** S. 114(2)(a)(vi) repealed: (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. 13(6)(b), **Sch. 28** (with reg. 1(2), Sch. 4); (S.) (1.9.2018) by [The Environmental Authorisations \(Scotland\) Regulations 2018 \(S.S.I. 2018/219\)](#), reg. 1, **sch. 7 para. 1** (with reg. 78, sch. 5 para. 2)
- F116** S. 114(2)(a)(vii) repealed (E.W.) (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), reg. 1(1)(b), **Sch. 23** (with reg. 72, Sch. 4)
- F117** S. 114(2)(a)(vii) substituted (S.) (27.3.2011) by [The Waste \(Scotland\) Regulations 2011 \(S.S.I. 2011/226\)](#), reg. 1(1), **sch. para. 1**
- F118** Words in s. 114(2)(a)(viii) inserted (31.3.2017) by [The Water Act 2014 \(Consequential Amendments etc.\) Order 2017 \(S.I. 2017/506\)](#), arts. 1(1), **10(4)**
- F119** S. 114(2)(a)(ix) inserted (E.W.) (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 3(13)**, 105(3); S.I. 2006/984, art. 2(c) (with [Sch. para. 2](#))
- F120** S. 114(2)(a)(ix) inserted (S.) (1.4.2006) by [The Water Environment \(Consequential and Savings Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/181\)](#), **sch. Pt. 4 para. 8(5)(c)**
- F121** S. 114(2)(b) omitted (S.) (1.4.2006) by virtue of [The Water Environment \(Consequential and Savings Provisions\) \(Scotland\) Order 2006 \(S.S.I. 2006/181\)](#), **sch. Pt. 4 para. 8(5)(d)**
- F122** S. 114(3)(b) repealed (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), **sch. 3 para. 29(7)**; S.S.I. 2014/160, art. 2(1)(2)

### Modifications etc. (not altering text)

- C39** S. 114 applied (S.) (1.4.2006) by [The Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/348\)](#), regs. 1(2), **49(3)** (with regs. 4, 50)
- C40** S. 114 applied (S.) (31.3.2011) by [The Water Environment \(Controlled Activities\) \(Scotland\) Regulations 2011 \(S.S.I. 2011/209\)](#), regs. 1(2), **53(3)** (with reg. 54)
- C41** S. 114(1)(3)(a)(4) applied (with modifications) (E.W.) (4.5.2000) by S.I. 2000/1043, **reg. 8**  
S. 114(1)(3)(a)(4) applied (S.) (8.5.2000) by S.S.I. 2000/95, **reg. 8**

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#### Marginal Citations

- M43 1989 c. 14.
- M44 1990 c. 43.
- M45 1991 c. 28.
- M46 1991 c. 57.
- M47 1974 c. 40.

### *Crown application*

#### 115 Application of this Act to the Crown.

- (1) Subject to the provisions of this section, this Act shall bind the Crown.
- (2) Part III of this Act and any amendments, repeals and revocations made by other provisions of this Act (other than those made by Schedule 21, which shall bind the Crown) bind the Crown to the extent that the enactments to which they relate bind the Crown.
- (3) No contravention by the Crown of any provision made by or under this Act shall make the Crown criminally liable; but the High Court or, in Scotland, the Court of Session may, on the application of the Agency [<sup>F123</sup>, the Natural Resources Body for Wales] or, in Scotland, SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (4) Notwithstanding anything in subsection (3) above, any provision made by or under this Act shall apply to persons in the public service of the Crown as it applies to other persons.
- (5) 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 those 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.
- (6) 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 <sup>M48</sup>Crown Proceedings Act 1947 (interpretation of references to Her Majesty in her private capacity) were contained in this Act.

#### Textual Amendments

- F123 Words in s. 115(3) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 385](#) (with Sch. 7)

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

- C42 S. 115(5): certain functions made exercisable by the Scottish Ministers concurrently with the Minister (1.7.1999) by [S.I. 1999/1750](#), arts. 1, 3, [Sch. 2](#) (with art. 7); [S.I. 1998/3178](#), [art. 3](#)

#### Commencement Information

- I3 S. 115 partly in force; s. 115 not in force at Royal Assent see s. 125(3); s. 115 in force for specified purposes at 1.4.1996 by [S.I. 1995/2950](#), [art. 3\(1\)](#) (subject to [art. 3\(2\)](#)) (which art. 3(2) was revoked

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(1.4.1997) by [S.I. 1996/2560, art. 3](#); s. 115 in force at 1.4.1996 insofar as not already in force by [S.I. 1996/186, art 3](#)

#### **Marginal Citations**

**M48** 1947 c. 44.

## **116 Application of certain other enactments to the Crown.**

Schedule 21 to this Act shall have effect.

#### **Commencement Information**

- I4** S. 116 partly in force; s. 116 not in force at Royal Assent see s. 125(3); s. 116 in force for specified purposes at 21.9.1995 by [S.I. 1995/1983, art. 3](#); s. 116 in force for further specified purposes at 1.7.1997 by [S.I. 1997/1626, art. 2\(b\)](#) (with transitional provisions in [art. 3](#)); s. 116 in force for further specified purposes at 8.4.1998 by [S.I. 1998/781, art. 2](#) (with transitional provisions in [art. 3](#)); s. 116 in force for further specified purposes at 1.12.2000 by [S.I. 2000/3033, art. 2](#)
- I5** S. 116 in force for specified purposes at 1.1.2018 by [S.I. 2017/1045, art. 2\(a\)](#)

### *Isles of Scilly*

## **117 Application of this Act to the Isles of Scilly.**

- (1) Subject to sections 77, 80 and 89 above and the provisions of any order under this section or section 89 above, nothing in this Act shall require or authorise any function, duty or power to be carried out, performed or exercised in relation to the Isles of Scilly by the Agency; and references in the other provisions of this Act (apart from Part III) to England and Wales shall not include references to those Isles.
- (2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order make provision with respect to the carrying out in those Isles of functions (other than functions under or by virtue of Part III or IV of this Act) falling to be carried out in relation to other parts of England and Wales by the Agency.
- (3) Without prejudice to the generality of the power conferred by subsection (2) above, an order under this section may apply any provision of this Act (other than a provision contained in Part III or IV) in relation to the Isles of Scilly with or without modifications.
- (4) 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.
- (5) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument; and a statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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**118 Application of certain other enactments to the Isles of Scilly.**

- (1) After section 10 of the <sup>M49</sup>Control of Pollution (Amendment) Act 1989 there shall be inserted—

**“10A Application to the Isles of Scilly.**

- (1) Subject to the provisions of any order under this section, this Act 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 Act 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.
- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument; and a statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.”

<sup>F124</sup>(2) .....

- (3) For section 76 of the <sup>M50</sup>Environmental Protection Act 1990 (which provides for Part II of that Act to have effect in its application to the Isles of Scilly with modifications specified by order) there shall be substituted—

**“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.”

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- (4) For section 222 of the <sup>M51</sup>Water Industry Act 1991 (application to Isles of Scilly) there shall be substituted—

**“222 Application to the Isles of Scilly.**

- (1) Subject to the provisions of any order under this section, this Act 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 Act 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.
- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

- (5) For section 224 of the <sup>M52</sup>Water Resources Act 1991 (application to Isles of Scilly) there shall be substituted—

**“224 Application to the Isles of Scilly.**

- (1) Subject to the provisions of any order under this section, this Act 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 Act 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.
- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

- (6) For section 75 of the <sup>M53</sup>Land Drainage Act 1991 (application to the Isles of Scilly) there shall be substituted—



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### “75 Application to the Isles of Scilly.

- (1) Subject to the provisions of any order under this section, this Act 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 Act 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.
- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.”

#### Textual Amendments

**F124** S. 118(2) repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 13](#)

#### Commencement Information

**I6** S. 118 partly in force; s. 118 not in force at Royal Assent see s. 125(3); s. 118(1)-(3)(6) wholly in force and s. 118(4)(5) in force for specified purposes at 1.2.1996 by [S.I. 1996/186](#), [art. 2](#)

#### Marginal Citations

**M49** 1989 c. 14.

**M50** 1990 c. 43.

**M51** 1991 c. 56.

**M52** 1991 c. 57.

**M53** 1991 c. 59.

### *Miscellaneous and supplemental*

#### 119 Stamp duty.

- (1) No transfer effected by Part I of this Act shall give rise to any liability to stamp duty.
- (2) Stamp duty shall not be chargeable—
  - (a) on any transfer scheme; or
  - (b) on any instrument or agreement which is certified to the Commissioners of Inland Revenue by the Secretary of State as made in pursuance of a transfer scheme.

*Status: Point in time view as at 01/04/2019.*

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- (3) No transfer scheme, and no instrument which is certified as mentioned in subsection (2)(b) above, shall be taken to be duly stamped unless—
- (a) it has, in accordance with section 12 of the <sup>M54</sup>Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped; or
  - (b) it is stamped with the duty to which it would be liable, apart from this section.
- (4) In this section “transfer scheme” means a scheme made or approved by the Secretary of State under section 3 or 22 above for the transfer of property, rights or liabilities to the Agency or to SEPA.

**Marginal Citations**

**M54** 1891 c. 39.

**120 Minor and consequential amendments, transitional and transitory provisions, savings and repeals.**

- (1) The enactments mentioned in Schedule 22 to this Act shall have effect with the amendments there specified (being minor amendments and amendments consequential on provisions of this Act); and, without prejudice to any power conferred by any other provision of this Act, the Secretary of State and the Minister shall each have power by regulations to make such additional consequential amendments—
- (a) of public general enactments passed before, or in the same Session as, this Act, and
  - (b) of subordinate legislation made before the passing of this Act,
- as he considers necessary or expedient by reason of the coming into force of any provision of this Act.
- (2) The transitional provisions, transitory provisions and savings contained in Schedule 23 to this Act shall have effect; but those provisions are without prejudice to sections 16 and 17 of the <sup>M55</sup>Interpretation Act 1978 (effect of repeals).
- (3) The enactments mentioned in Schedule 24 to this Act (which include some that are spent or no longer of practical utility) are hereby repealed to the extent specified in the third column of that Schedule.
- (4) The power to make regulations under subsection (1) above shall be exercisable by statutory instrument; and a statutory instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) The power to make regulations under subsection (1) above includes power to make such incidental, supplemental, consequential and transitional provision as the Secretary of State or the Minister thinks necessary or expedient.
- (6) In this section—
- “the Minister” means the Minister of Agriculture, Fisheries and Food;
  - “subordinate legislation” has the same meaning as in the <sup>M56</sup>Interpretation Act 1978.

*Status: Point in time view as at 01/04/2019.*

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### Commencement Information

- I7** S. 120 partly in force; S. 120(1) in force for specified purposes at Royal Assent see s. 125(3); s. 120(4)-(6) and s. 120(1) for further specified purposes in force at 28.7.1995 by S.I. 1995/1983, **art. 2**; s. 120(1)(3) in force for further specified purposes at 21.9.1995 by S.I. 1995/1983, **art. 3**; s. 120(2)(3) in force for further specified purposes at 1.1.1999 by S.I. 1995/1983, **art. 4**; s. 120(1) in force for further specified purposes at 12.10.1995 by S.I. 1995/2649, **art. 2(j)**; s. 120(3) in force for further specified purposes at 1.11.1995 by S.I. 1995/2765, **art. 2**; s. 120(1)(3) in force for further specified purposes at 1.2.1996 by S.I. 1996/186, **art. 2**; s. 120(1)-(3) in force for further specified purposes at 1.4.1996 by S.I. 1996/186, **art. 3** (with art. 4); s. 120(3) in force for further specified purposes at 1.4.1997 by S.I. 1996/2560, **art. 2**; s. 120(3) in force for further specified purposes at 1.1.1997 by S.I. 1996/2857, **art. 2**; s. 120(1) in force for further specified purposes at 21.11.1996 by S.I. 1996/2909, **art. 2** (with art. 4); s. 120(1)(3) in force for further specified purposes at 31.12.1996 by S.I. 1996/2909, **art. 3** (subject to art. 4); s. 120(1) in force for further specified purposes at 23.12.1997 by S.I. 1997/3044, **art. 2**; s. 120(1) in force for further specified purposes at 1.4.1998 by S.I. 1998/604, **art. 2**; s. 120(1) in force for further specified purposes at 16.3.1999 by S.I. 1999/803, **art. 2**; s. 120(1) in force for further specified purposes at 1.4.1999 by S.I. 1999/803, **art. 3**; s. 120(1) in force for further specified purposes at 29.4.1999 by S.I. 1999/1301, **art. 2**; s. 120(1)(3) in force for E. for further specified purposes at 1.4.2000 by S.I. 2000/340, **art. 2(b)(c)** (with art. 3); s. 120(1)(3) in force for S. for further specified purposes at 14.7.2000 by S.S.I. 2000/180, **art. 2(1)(b)(c)** (with art. 3); s. 120(1) in force for S. for further specified purposes at 1.1.2001 by S.S.I. 2000/433, **art. 2**; s. 120(1)(3) in force for W. for further specified purposes at 15.9.2001 by S.I. 2001/3211, **art. 2(b)** (with art. 3)
- I8** S. 120(1) in force at 1.4.2003 for specified purposes for S. by S.S.I. 2003/206, **art. 2**
- I9** S. 120(1)(3) in force at 1.1.2005 for specified purposes for S. by S.S.I. 2004/541, **art. 2**
- I10** S. 120(1)(3) in force at 1.1.2005 for specified purposes for E.W. by S.I. 2006/934, **art. 2**
- I11** S. 120(1) in force at 1.4.2015 for specified purposes for S. by S.S.I. 2015/73, **art. 2(1)**
- I12** S. 120(3) in force at 1.4.2015 for specified purposes for S. by S.S.I. 2015/73, **art. 2(2)**

### Marginal Citations

- M55** 1978 c. 30.  
**M56** 1978 c.30.

## 121 Local statutory provisions: consequential amendments etc.

- (1) If it appears to the Secretary of State or the Minister to be appropriate to do so—
- for the purposes of, or in consequence of, the coming into force of any enactment contained in this Act; or
  - in consequence of the effect or operation at any time after the transfer date of any such enactment or of anything done under any such enactment,
- he may by order repeal, amend or re-enact (with or without modifications) any local statutory provision, including, in the case of an order by virtue of paragraph (b) above, a provision amended by virtue of paragraph (a) above.
- (2) An order made by the Secretary of State or the Minister under subsection (1) above may—
- make provision applying generally in relation to local statutory provisions of a description specified in the order;
  - make different provision for different cases, including different provision in relation to different persons, circumstances or localities;

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- (c) contain such supplemental, consequential and transitional provision as the Secretary of State or, as the case may be, the Minister considers appropriate; and
  - (d) in the case of an order made after the transfer date, require provision contained in the order to be treated as if it came into force on that date.
- (3) The power under this section to repeal or amend a local statutory provision shall include power to modify the effect in relation to any local statutory provision of any provision of Schedule 23 to this Act.
- (4) Nothing in any order under this section may abrogate or curtail the effect of so much of any local statutory provision as confers any right of way or confers on or preserves for the public—
- (a) any right of enjoyment of air, exercise or recreation on land; or
  - (b) any right of access to land for the purposes of exercise or recreation.
- (5) The power to make an order under subsection (1) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The power to make an order under subsection (1) above shall be without prejudice to any power conferred by any other provision of this Act.
- (7) In this section—
- “local statutory provision” means—
    - (a) a provision of a local Act (including an Act confirming a provisional order);
    - (b) a provision of so much of any public general Act as has effect with respect to a particular area, with respect to particular persons or works or with respect to particular provisions falling within any paragraph of this definition;
    - (c) a provision of an instrument made under any provision falling within paragraph (a) or (b) above; or
    - (d) a provision of any other instrument which is in the nature of a local enactment;
  - “the Minister” means the Minister of Agriculture, Fisheries and Food;
  - “the transfer date” has the same meaning as in Part I of this Act.

## **122 Directions.**

- (1) Any direction given under this Act shall be in writing.
- (2) Any power conferred by this Act to give a direction shall include power to vary or revoke the direction.
- (3) Subsections (4) and (5) below apply to any direction given—
  - (a) to the Agency or SEPA under any provision of this Act or any other enactment, or
  - (b) to any other body or person under any provision of this Act,
 being a direction to any extent so given for the purpose of implementing any obligations of the United Kingdom under the [F1EU] Treaties.

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- (4) A direction to which this subsection applies shall not be varied or revoked unless, notwithstanding the variation or revocation, the obligations mentioned in subsection (3) above, as they have effect for the time being, continue to be implemented, whether by directions or any other instrument or by any enactment.
- (5) Any variation or revocation of a direction to which this subsection applies shall be published in such manner as the Minister giving it considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them; and—
- (a) copies of the variation or revocation shall be made available to the public; and
  - (b) notice of the variation or revocation, and of where a copy of the variation or revocation may be obtained, shall be given—
    - (i) if the direction has effect in England and Wales, in the London Gazette;
    - (ii) if the direction has effect in Scotland, in the Edinburgh Gazette.
- [<sup>F125</sup>(6) In this section, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

#### Textual Amendments

**F1** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

**F125** S. 122(6) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 43\(12\)](#); S.S.I. 2014/160, art. 2(1)(2)

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

**C43** S. 122 applied (E.W.) (2.1.2004) by [The Water Environment \(Water Framework Directive\) \(England and Wales\) Regulations 2003 \(S.I. 2003/3242\)](#), regs. 1(a), **20(2)** (with reg. 1(c))

**C44** S. 122 applied (E.W.) (10.4.2017) by [The Water Environment \(Water Framework Directive\) \(England and Wales\) Regulations 2017 \(S.I. 2017/407\)](#), regs. 1(a), **36(2)** (with reg. 1(c))

## 123 Service of documents.

- (1) Without prejudice to paragraph 17(2)(d) of Schedule 7 to this Act, any notice required or authorised by or under this Act to be served (whether the expression “serve” or the expression “give” or “send” or any other expression is used) on any person may be served by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.
- (2) Any such notice may—
- (a) in the case of a body corporate, be served on the secretary or clerk of that body;
  - (b) in the case of a partnership, be served on a partner or a person having the control or management of the partnership business.
- (3) For the purposes of this section and of section 7 of the <sup>M57</sup>Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person on whom any such notice is to be served 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;

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- (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.
- (4) If the person to be served with any such notice has specified an address in the United Kingdom other than his proper address within the meaning of subsection (3) 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 <sup>M58</sup>Interpretation Act 1978 as his proper address.
- (5) Where under any provision of this Act any notice is required to be served on a person who is, or appears to be, in occupation of any premises then—
- (a) if the name or address of such a person cannot after reasonable inquiry be ascertained, or
- (b) if the premises appear to be or are unoccupied,
- that notice may be served either by leaving it in the hands of a person who is or appears to be resident or employed on the premises or by leaving it conspicuously affixed to some building or object on the premises.
- (6) This section shall not apply to any notice in relation to the service of which provision is made by rules of court.
- (7) The preceding provisions of this section shall apply to the service of a document as they apply to the service of a notice.
- (8) In this section—
- “premises” includes any land, vehicle, vessel or mobile plant;
- “serve” shall be construed in accordance with subsection (1) above.

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

- C45** S. 123 applied (with modifications) (1.4.1999) by [S.I. 1998/2746](#), **reg. 16(2)**  
S. 123 applied (E.W.) (4.5.2000) by [S.I. 2000/1043](#), **reg. 2(3)**
- C46** S. 123 applied by [The Rural Stewardship Scheme \(Scotland\) Regulations 2001](#) (S.S.I. 2001/300), **reg. 14(6)** (as substituted (S.) (1.4.2003) by [S.S.I. 2003/177](#), **regs. 1, 2(4)**)
- C47** S. 123 applied (S.) (1.5.2004) by [Organic Aid \(Scotland\) Regulations 2004](#) (S.S.I. 2004/143), **regs. 1(1), 24** (with **reg. 3**)
- C48** S. 123 applied by [Reservoirs Act 1975](#) (c. 23), **s. 22A** (as inserted (1.10.2004) by [Water Act 2003](#) (c. 37), **ss. 76(2), 105(3)**; [S.I. 2004/2528](#), **art. 2(1)** (with **Sch. para. 8**))
- C49** S. 123 applied (S.) (1.4.2015) by [Reservoirs \(Scotland\) Act 2011](#) (asp 9), **ss. 106(1), 116(1)** (with **s. 110**); [S.S.I. 2015/63](#), **art. 2**
- C50** S. 123(1)-(5) applied (E.W.) (1.10.2008 for E.) by [Commons Act 2006](#) (c. 26), **ss. 46(10), 56** (with **s. 60**); [S.I. 2008/1960](#), **art. 2(2)**
- C51** S. 123(1)-(4) applied (6.4.2010) by [The Environment Agency \(Inland Waterways\) Order 2010](#) (S.I. 2010/699), **arts. 1(2), 16(4)** (with **art. 3**)

#### Marginal Citations

- M57** 1978 c.30.  
**M58** 1978 c. 30.

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## 124 General interpretation.

- (1) In this Act, except in so far as the context otherwise requires—
  - “the Agency” means the Environment Agency;
  - “financial year” means a period of twelve months ending with 31st March;
  - “functions” includes powers and duties;
  - “modifications” includes additions, alterations and omissions and cognate expressions shall be construed accordingly;
  - “notice” means notice in writing;
  - “records”, without prejudice to the generality of the expression, includes computer records and any other records kept otherwise than in a document;
  - “SEPA” means the Scottish Environment Protection Agency.
- (2) The amendment by this Act of any provision contained in subordinate legislation shall not be taken to have prejudiced any power to make further subordinate legislation amending or revoking that provision.
- (3) In subsection (2) above, “subordinate legislation” has the same meaning as in the <sup>M59</sup>Interpretation Act 1978.

### Marginal Citations

M59 1978 c. 30.

## 125 Short title, commencement, extent, etc.

- (1) This Act may be cited as the Environment Act 1995.
- (2) Part III of this Act, except for section 78, paragraph 7(2) of Schedule 7 and Schedule 10, shall come into force at the end of the period of two months beginning with the day on which this Act is passed.
- (3) Except as provided in subsection (2) above and except for this section, section 74 above and paragraphs 76(8)(a) and 135 of Schedule 22 to this Act (which come into force on the passing of this Act) and the repeal of sub-paragraph (1) of paragraph 22 of Schedule 10 to this Act (which comes into force in accordance with sub-paragraph (7) of that paragraph) this Act shall come into force on such day as the Secretary of State may specify by order made by statutory instrument; and different days may be so specified for different provisions or for different purposes of the same provision.
- (4) Without prejudice to the <sup>M60</sup>provisions of Schedule 23 to this Act, an order under subsection (3) above may make such transitional provisions and savings as appear to the <sup>M61</sup>Secretary of State necessary or expedient in connection with any provision brought into force by the <sup>M62</sup>order.
- (5) The power conferred by subsection (4) above includes power to modify any enactment contained in this or any other Act.
- (6) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the <sup>M63</sup>Northern Ireland Act 1974 (legislation for Northern Ireland in the <sup>M64</sup>interim period) which states that it is made only for purposes corresponding to those of section 98 of this Act—
  - (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but

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- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (7) Except for this section and any amendment or repeal by this Act of any provision contained in—
- (a) the Parliamentary Commissioner Act 1967,
  - (b) the Sea Fish (Conservation) Act 1967,
  - (c) the House of Commons Disqualification Act 1975, or
  - (d) the Northern Ireland Assembly Disqualification Act 1975,
- this Act shall not extend to Northern Ireland.
- (8) Part III of this Act, and Schedule 24 to this Act so far as relating to that Part, extends to England and Wales only.
- (9) Section 106 of, and Schedule 16 to, this Act extend to Scotland only.
- (10) Subject to the foregoing provisions of this section and to any express provision made by this Act to the contrary, any amendment, repeal or revocation made by this Act shall have the same extent as the enactment or instrument to which it relates.

#### **Subordinate Legislation Made**

- P1** S. 125(3)(4) power partly exercised: 15.9.2001 appointed for W. for specified provisions by S.I. 2001/3211, **art. 2**
- P2** S. 125(3) power partly exercised (21.7.1995): different dates appointed for specified provisions by S.I. 1995/1983, **arts. 2-4**
- S. 125(3) power partly exercised (5.10.1995): 12.10.1995 appointed for specified provisions by S.I. 1995/2649, **art. 2(j)**
- S. 125(3) power partly exercised (24.10.1995): 1.11.1995 appointed for specified provisions by S.I. 1995/2765, **art. 2**
- S. 125(3) power partly exercised (16.11.1995): different dates appointed for specified provisions by S.I. 1995/2950, **arts. 2(1), 3(1)** (subject to **arts. 2(2), 3(2)**) (which art. 3(2) was revoked (1.4.1997) by S.I. 1996/2560, **art. 3**)
- S. 125(3) power partly exercised (31.1.1996): different dates appointed for specified provisions by S.I. 1996/186, **arts. 2, 3** (with **art. 4**)
- S. 125(3) power partly exercised (7.10.1996): 1.4.1997 appointed for specified provisions by S.I. 1996/2560, **art. 2**
- S. 125(3) power partly exercised (8.11.1996): 1.1.1997 appointed for specified provisions by S.I. 1996/2857, **art. 2**
- S. 125(3) power partly exercised (20.11.1996): different dates appointed for specified provisions by S.I. 1996/2909, **arts. 2, 3** (subject to **art. 4**)
- S. 125(3) power partly exercised (27.6.1997): 1.7.1997 appointed for specified provisions by S.I. 1997/1626, **art. 2** (with transitional provisions in **art. 3**)
- S. 125(3) power partly exercised (16.12.1997): 23.12.1997 appointed for specified provisions by S.I. 1997/3044, **art. 2**
- S. 125(3) power partly exercised (4.3.1998): different dates appointed for specified provisions by S.I. 1998/604, **arts. 2, 3**
- S. 125(3) power partly exercised (11.3.1998): 8.4.1998 appointed for specified provisions by S.I. 1998/781, **art. 2** (with transitional provisions in **art. 3**)
- S. 125(3) power partly exercised (22.12.1998): 1.1.1999 appointed for specified provisions by S.I. 1998/3272, **art. 2**
- S. 125(3) power partly exercised (15.3.1999): different dates appointed for specified provisions by S.I. 1999/803, **arts. 2, 3**



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S. 125(3) power partly exercised (27.4.1999): 29.4.1999 appointed for specified provisions by S.I. 1999/1301, **art. 2**

S. 125(3) power partly exercised (2.2.2000): 1.4.2000 appointed for E. for specified provisions by S.I. 2000/340, **art. 2** (with **art. 3**)

S. 125(3) power partly exercised (12.6.2000): 14.7.2000 appointed for S. for specified provisions by S.S.I. 2000/180, **art. 2(1)** (subject to **art. 2(2)**, with **art. 3**)

S. 125(3) power partly exercised (12.7.2000): 14.7.2000 appointed for S. for specified provisions by S.I. 2000/1986, **art. 2**

S. 125(3) power partly exercised (29.11.2000): 1.1.2001 appointed for S. for specified provisions by S.S.I. 2000/433, **art. 2**

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### **Marginal Citations**

**M60** 1975 c. 35.

**M61** 1975 c. 24.

**M62** 1967 c. 84.

**M63** 1974 c. 28.

**M64** 1967 c. 13.

**Status:**

Point in time view as at 01/04/2019.

**Changes to legislation:**

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