

SCHEDULES

SCHEDULE 3

THE OFFICE FOR ENVIRONMENTAL PROTECTION: NORTHERN IRELAND

PART 2

AMENDMENTS OF THE OEP'S GENERAL FUNCTIONS

- 20 This Act is amended in accordance with paragraphs 21 to 30.
- 21 (1) Section 23 (principal objective of the OEP and exercise of its functions) is amended as follows.
- (2) In subsection (6)—
- (a) after paragraph (a) insert—
- “(aa) how the OEP intends to determine whether failures to comply with relevant environmental law are serious for the purposes of paragraphs 7(1)(b) and (2)(b), 9(1)(b), 10(1)(b), 12(1)(b) and 13(1) and (6) of Schedule 3,”;
- (b) at the end of paragraph (b) insert “or paragraph 13(2) of Schedule 3,”;
- (c) omit the “and” at the end of paragraph (d);
- (d) after paragraph (d) insert—
- “(da) how the OEP intends to avoid any overlap between the exercise of its functions under paragraphs 6 to 8 of Schedule 3 (complaints) and the exercise by the Northern Ireland Public Services Ombudsman of its functions, and”.
- (3) In subsection (7)(c) after “environmental law” insert “or Northern Ireland environmental law”.
- (4) After subsection (7) insert—
- “(7A) In this section “relevant environmental law” and “Northern Ireland environmental law” have the meanings they have in Part 1 of Schedule 3 (see paragraphs 5 and 18(2) of that Schedule).”
- (5) In subsection (8) after “sections 32 to 41” insert “and paragraphs 6 to 15 of Schedule 3”.
- 22 In section 24 (the OEP's strategy: process), in subsection (1)(a) after “Parliament” insert “and the Northern Ireland Assembly”.
- 23 (1) Section 25 (guidance on the OEP's enforcement policy and functions) is amended as follows.
- (2) At the end of subsection (1) insert “, so far as relating to the OEP's Part 1 enforcement functions.”

- (3) In subsection (2)—
- (a) in paragraph (a) after “policy,” insert “so far as relating to its Part 1 enforcement functions,”;
 - (b) in paragraph (b) for “enforcement functions” substitute “Part 1 enforcement functions”.
- (4) In subsection (3) for “enforcement functions” substitute “Part 1 enforcement functions”.
- 24 After section 25 (guidance on the OEP’s enforcement policy and functions) insert—

“25A Guidance on the OEP’s Northern Ireland enforcement policy and functions

- (1) The Department of Agriculture, Environment and Rural Affairs in Northern Ireland may issue guidance to the OEP on the matters listed in section 23(6) (OEP’s enforcement policy), so far as relating to the OEP’s Northern Ireland enforcement functions.
- (2) The OEP must have regard to the guidance in—
 - (a) preparing its enforcement policy, so far as relating to its Northern Ireland enforcement functions, and
 - (b) exercising its Northern Ireland enforcement functions.
- (3) The OEP’s “Northern Ireland enforcement functions” are its functions under paragraphs 6 to 15 of Schedule 3.
- (4) Before issuing the guidance, the Department must—
 - (a) prepare a draft, and
 - (b) lay the draft before the Northern Ireland Assembly.
- (5) If before the end of the 21 day period the Northern Ireland Assembly passes a resolution in respect of the draft guidance, the Department must produce a response and lay it before the Assembly.
- (6) The Department may prepare and lay before the Northern Ireland Assembly the final guidance, but not before—
 - (a) if subsection (5) applies, the day on which the Department lays the response required by that subsection, or
 - (b) otherwise, the end of the 21 day period.
- (7) The final guidance has effect when it is laid before the Northern Ireland Assembly.
- (8) The Department must publish the guidance when it comes into effect.
- (9) The “21 day period” is the period of 21 sitting days beginning with the first sitting day after the day on which the draft guidance is laid under subsection (4).
- (10) “Sitting day” means a day on which the Northern Ireland Assembly sits.
- (11) The Department may revise the guidance at any time (and subsections (4) to (10) apply in relation to any revised guidance).”

- 25 (1) Section 27 (co-operation duties of public authorities and the OEP) is amended as follows.
- (2) In subsection (2)—
- (a) in paragraph (d) for “, the Welsh Ministers, a Northern Ireland department or a Minister within the meaning of the Northern Ireland Act 1998” substitute “or the Welsh Ministers”;
- (b) in paragraph (f) for “devolved functions” substitute “Scottish devolved functions or Welsh devolved functions”.
- (3) In subsection (3) for “devolved functions”, in both places it occurs, substitute “Scottish devolved functions or Welsh devolved functions”.
- (4) After subsection (3) insert—
- “(3A) An implementation body is only required to co-operate with the OEP by virtue of subsection (1) to the extent that co-operation is in relation to functions of that body exercisable in or as regards Northern Ireland.
- In this subsection “implementation body” has the meaning it has in section 55 of the Northern Ireland Act 1998 (see subsection (3) of that section).”

26 In section 37 (linked notices), after subsection (6) insert—

“(6A) If the OEP considers that an information notice or a decision notice relates to conduct that is the same as or similar to conduct that is the subject of a Northern Ireland information notice or Northern Ireland decision notice, it may determine that those notices are linked.

(6B) The OEP must provide the recipient of an information notice or a decision notice with—

- (a) a copy of every Northern Ireland information notice or Northern Ireland decision notice which is linked to it, and
- (b) a copy of any relevant correspondence, relating to such a notice, between the OEP and the recipient of that notice.”

27 (1) Section 43 (confidentiality of proceedings) is amended as follows.

(2) In subsection (2)—

(a) in paragraph (b) after “(investigations)” insert “or paragraph 7 of Schedule 3 (functions of the OEP in Northern Ireland)”;

(b) after paragraph (c) insert—

“(ca) made for purposes connected with the co-ordination of the OEP’s functions that relate to investigations under paragraph 7 of Schedule 3 and the Northern Ireland Public Services Ombudsman’s functions that relate to investigations by the Ombudsman;”;

(c) in paragraph (d) after “section 33” insert “or paragraph 7 of Schedule 3”;

(d) in paragraph (e) after “sections 35 to 41” insert “or paragraphs 9 to 15 of Schedule 3”;

(e) in paragraph (h) after “this Chapter” insert “or Part 1 of Schedule 3”.

(3) In subsection (3)(a) for “or decision notice” substitute “, decision notice, Northern Ireland information notice or Northern Ireland decision notice”.

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- (4) In subsection (4)—
- (a) in paragraph (a)(i) for “or a decision notice” substitute “, a decision notice, a Northern Ireland information notice or a Northern Ireland decision notice”;
 - (b) in paragraph (b) after “section 33” insert “or paragraph 7 of Schedule 3”;
 - (c) in paragraph (d) after “judicial review” insert “(which includes a review application)”.
- (5) In subsection (5)—
- (a) for “or a decision notice” substitute “, a decision notice, a Northern Ireland information notice or a Northern Ireland decision notice”;
 - (b) after “this Chapter” insert “or Part 1 of Schedule 3”.
- (6) In subsection (6) after “this Chapter” insert “or Part 1 of Schedule 3”.
- 28 (1) Section 47 (interpretation of Part 1 of the Act) is amended as follows.
- (2) The existing text becomes subsection (1).
- (3) In that subsection—
- (a) in the definition of “devolved environmental governance function”—
 - (i) for “devolved function” substitute “Scottish devolved function or Welsh devolved function”;
 - (ii) after “this Part” insert “or Part 1 of Schedule 3 (functions of the OEP in Northern Ireland)”;
 - (b) at the appropriate places insert—

““Northern Ireland decision notice” means a notice given under paragraph 10 of Schedule 3 (functions of the OEP in Northern Ireland);”;

““Northern Ireland information notice” means a notice given under paragraph 9 of Schedule 3;”;

““review application” has the meaning it has in Part 1 of Schedule 3 (see paragraph 12 of that Schedule);”;

““Scottish devolved function” means a function exercisable in or as regards Scotland, the exercise of which would be within devolved competence (within the meaning of section 54 of the Scotland Act 1998);”;

““Welsh devolved function” means a function exercisable in or as regards Wales that could be conferred by provision falling within the legislative competence of Senedd Cymru (see section 108A of the Government of Wales Act 2006).”.
- (4) After that subsection insert—
- “(2) Section 41(3) of the [Interpretation Act \(Northern Ireland\) 1954 \(c. 33 \(N.I.\)\)](#) applies in relation to the laying of a document before the Northern Ireland Assembly under this Part, as it applies in relation to the laying of a statutory document under an Act of the Northern Ireland Assembly.”
- 29 (1) Schedule 1 is amended as follows.
- (2) In paragraph 1—
- (a) in sub-paragraph (1), after paragraph (a) insert—

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- “(aa) a Northern Ireland member (who is to be a non-executive member);”;
 - (b) in sub-paragraph (2) after “Secretary of State” insert “, the Northern Ireland Department”;
 - (c) in sub-paragraph (3)—
 - (i) for “In making those appointments,” substitute “When exercising their functions of appointment”;
 - (ii) after “non-executive members” insert “(including the Northern Ireland member)”.
- (3) In paragraph 2 for sub-paragraphs (1) and (2) substitute—
- “(1) The Chair is to be appointed by the Secretary of State acting jointly with the Northern Ireland Department, other than the first Chair who is to be appointed by the Secretary of State.
 - (2) The Northern Ireland member is to be appointed by the Northern Ireland Department after consulting the Secretary of State and the Chair.
 - (2A) The other non-executive members are to be appointed by the Secretary of State after consulting the Northern Ireland Department and the Chair.
 - (2B) The Northern Ireland Department must appoint as the Northern Ireland member a person with experience of—
 - (a) Northern Ireland environmental law (within the meaning of Part 1 of Schedule 3),
 - (b) environmental science in Northern Ireland, or
 - (c) environmental regulation in Northern Ireland.”
- (4) In paragraph 3(3) after “Secretary of State” insert “and the Northern Ireland Department”.
- (5) In paragraph 5—
- (a) in sub-paragraph (4) after “of non-executive members” insert “(including the Northern Ireland member)”;
 - (b) after that sub-paragraph insert—
 - “(4A) The Northern Ireland Department must, in determining the length of a Northern Ireland member’s term, have regard to the desirability of securing that the appointments of non-executive members expire at different times.”;
 - (c) for sub-paragraph (6) substitute—
 - “(6) A non-executive member ceases to be a member of the OEP upon becoming its employee.
 - (7) A non-executive member, other than the Northern Ireland member—
 - (a) may resign from office by giving notice to the Secretary of State, and
 - (b) may be removed from office by notice given by the Secretary of State, after consulting the Northern Ireland Department, on the grounds that the member—

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- (i) has without reasonable excuse failed to discharge the member’s functions, or
- (ii) is, in the opinion of the Secretary of State, unable or unfit to carry out the member’s functions.

(8) The Northern Ireland member—

- (a) may resign from office by giving notice to the Northern Ireland Department, and
- (b) may be removed from office by notice given by the Northern Ireland Department after consulting the Secretary of State, on the grounds that the member—
 - (i) has without reasonable excuse failed to discharge the member’s functions, or
 - (ii) is, in the opinion of the Northern Ireland Department, unable or unfit to carry out the member’s functions.”

(6) In paragraph 10(4)—

- (a) in paragraph (b) after “section 28 or 29” insert “, or a report under paragraph 1 or 2 of Schedule 3 (functions of the OEP in Northern Ireland)”;
- (b) in paragraph (c) after “section 30(1) or (3)” insert “, or written advice to a Northern Ireland department under paragraph 3(1) or (3) of Schedule 3”;
- (c) in paragraph (d) after “information notice” insert “or a Northern Ireland information notice”;
- (d) in paragraph (e) after “decision notice” insert “or a Northern Ireland decision notice”;
- (e) after paragraph (g) insert—
 - “(ga) deciding whether to make a review application (see paragraph 12 of Schedule 3) or an application for judicial review by virtue of paragraph 13(1) of that Schedule or to intervene in proceedings that relate to a judicial review (see paragraph 13 of that Schedule);”.

(7) In paragraph 12—

- (a) in sub-paragraph (1)—
 - (i) after “Secretary of State”, in the first place it occurs, insert “and the Northern Ireland Department”;
 - (ii) after “must” insert “, between them,”;
 - (iii) for “the Secretary of State considers” substitute “they consider”;
- (b) in sub-paragraph (2)—
 - (i) after “Secretary of State”, in the first place it occurs, insert “, or the Northern Ireland Department,”;
 - (ii) after “Secretary of State”, in the second place it occurs, insert “, or that department,”.

(8) In paragraph 13(2)(a) after “Parliament” insert “and the Northern Ireland Assembly”.

(9) In paragraph 14—

- (a) in sub-paragraph (3) after “Secretary of State” insert “and the Northern Ireland Department”;

- (b) in sub-paragraph (4) after “Secretary of State” insert “, the Northern Ireland Department”;
 - (c) in sub-paragraph (5)(b) after “Secretary of State” insert “, the Northern Ireland Department”;
 - (d) in sub-paragraph (6) after “Parliament” insert “and the Northern Ireland Assembly”.
- (10) In paragraph 17 after “Secretary of State” insert “and the Northern Ireland Department”.
- (11) After paragraph 23 insert—

“Meaning of “the Northern Ireland Department”

24 In this Schedule “the Northern Ireland Department” means the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.”

- 30 (1) Schedule 2 (improving the natural environment: Northern Ireland) is amended as follows.
- (2) In paragraph 3(4)(b) after “under paragraph 5” insert “and reports made by the OEP under paragraph 1 of Schedule 3”.
 - (3) In paragraph 4(4)(b) after “under paragraph 5” insert “and reports made by the OEP under paragraph 1 of Schedule 3”.
 - (4) In paragraph 11(1), at the appropriate place insert—
““OEP” has the meaning given by section 22;”.