

Draft Regulations laid before the Assembly under section 147(9) of the Environment Act 2021 for approval

DRAFT STATUTORY RULES OF NORTHERN IRELAND

2022 No. 0000 (C. XX)

ENVIRONMENTAL PROTECTION

The Environment (2021 Act) (Commencement and Saving Provision) Order (Northern Ireland) 2022

Made - - - -

The Department of Agriculture, Environment and Rural Affairs, with the consent of the Secretary of State as required by section 147(7) of the Environment Act 2021⁽¹⁾, in exercise of the powers conferred by sections 147(6) and 148(4) and (7) makes the following Order.

Citation and interpretation

1.—(1) This Order may be cited as the Environment (2021 Act) (Commencement and Saving Provision) Order (Northern Ireland) 2022.

(2) In this Order any reference to a numbered section or Schedule is to the section of, or Schedule to, the Environment Act 2021.

Appointed Days

2.—(1) The day appointed for coming into force of —

- (a) section 49 and Schedule 3 (the Office for Environmental Protection: Northern Ireland);
- (b) section 50 and schedule 4 (producer responsibility obligations);
- (c) section 51 and Schedule 5 (producer responsibility for disposal costs);
- (d) section 52 and Schedule 6 (resource efficiency information);
- (e) section 53 and Schedule 7 (resource efficiency requirements);
- (f) section 54 and Schedule 8 (deposit schemes);
- (g) section 55 and Schedule 9 (charges for single use items);
- (h) section 56 (charges for carrier bags);
- (i) section 59 (electronic waste tracking: Northern Ireland);
- (j) section 61 (hazardous waste: Northern Ireland);

- (k) section 65 (waste charging: Northern Ireland);
- (l) section 67 (enforcement powers: Northern Ireland);
- (m) section 71 (waste regulation: amendment of Northern Ireland Order);
- (n) section 89 (water quality: powers of Secretary of State), so far as relating to legislation within section 89(2)(d) to (f) and any regulations modifying that legislation made under or by virtue of the European Union (Withdrawal) Act 2018(2);
- (o) section 91 (water quality: powers of Northern Ireland Department); and
- (p) section 140 and Schedule 21 (amendment of REACH legislation) so far as relating to powers to make regulations under paragraph 2 of that Schedule

is 28th February 2022.

(2) The day appointed for the coming into force of section 48 and Schedule 2 (improving the natural environment: Northern Ireland) except for paragraph 8 is 25th July 2022.

(3) Paragraph 8 of Schedule 2 comes into force at the end of the six month period beginning with the day the final policy statement is laid before the Northern Ireland Assembly as required by paragraph 7(5) of that Schedule.

Saving provision

3. Notwithstanding the coming into force of section 50(6), by virtue of Article 2(1)(b), which repeals the Producer Responsibility Obligations (Northern Ireland) Order 1998(3), the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007(4) remain in operation and have effect as if made under Schedules 4 and 6.

Sealed with the Official Seal of the Department of Agriculture, Environment and Rural Affairs on
xx



John Mills
A senior officer of the Department of
Agriculture, Environment and Rural Affairs

(2) 2018 c. 16
(3) S.I. 1998 No. 1762 (N.I. 16)
(4) S.R. 2007 No. 198 as amended by S.R. 2008 No. 77, S.R. 2008 No. 373, S.R. 2010 No. 396, S.R. 2011 No. 127, S.I. 2011/1043, S.R. 2012 No. 437, S.R. 2013 No. 262, S.R. 2014 No. 276, S.R. 2016 No. 79, S.R. 2016 No. 95, S.I. 2016/241, S.R. 2017 No. 3, S.R. 2017 No. 230, S.R. 2018 No. 200, S.R. 2019 No. 240, S.I. 2019/271, S.I. 2019/289, S.R. 2020 No. 284, S.R. 2020 No. 285, S.R. 2020 No. 345

EXPLANATORY NOTE

(This note is not part of the Regulations)

This Order is the first and only Commencement Order to be made by the Department of Agriculture, Environment and Rural Affairs (“the Department”) under the Environment Act 2021 and brings into operation provisions relating to Northern Ireland devolved matters. Article 2 sets out the appointed days for these provisions coming into operation.

Article 2(1) brings the following provisions into operation on 28th February 2022:

Section 49 and Schedule 3, which set out the functions, duties and powers of the Office for Environmental Protection (“the OEP”) in Northern Ireland, and amend its general functions to reflect its extended operational remit.

Section 50 and Schedule 4, which provide powers for the Department and the Defra Secretary of State (with the Department’s consent) to make regulations in relation to producer responsibility obligations in Northern Ireland and repeal the Producer Responsibility Obligations (Northern Ireland) Order 1998.

Section 51 and Schedule 5, which enable the making of regulations by the Department and the Defra Secretary of State (with the Department’s consent) for extended producer responsibility for packaging and allow for the costs of disposing of products or materials to be recovered.

Section 52 and Schedule 6, which enable the Department and the Defra Secretary of State (with the Department’s consent) to introduce subordinate legislation requiring the provision resource efficiency information. This will provide consumers with more information about products’ durability, life cycle and reparability.

Section 53 and Schedule 7, which enable the making of regulations by the Department and the Defra Secretary of State (with the Department’s consent) that set resource efficiency requirements for products that have a significant impact on natural resources at any stage of their lifecycle.

Section 54 and Schedule 8, which provide enabling powers for the Department and the Defra Secretary of State (with the Department’s consent) to make regulations establishing deposit schemes.

Section 55 and Schedule 9, which give the Department powers to make regulations about charges for single use plastic items;

Section 56, which amends Schedule 6 to the Climate Change Act 2008 to provide a power for the Department to make regulations requiring sellers of carrier bags in Northern Ireland to register with an administrator.

Section 59, which amends the Waste and Contaminated Land (Northern Ireland) Order 1997 to create powers for the Department to introduce electronic (digital) waste tracking in Northern Ireland, and to create associated criminal offences (punishable by a fine) and civil penalties.

Section 61, which gives the Department increased domestic powers around the regulation of hazardous waste. This will enable the current hazardous waste legislation in Northern Ireland, including provisions relating to fixed penalty notices, to be updated and strengthened in the future.

Section 65, which gives the Department powers to make charging schemes relating to functions it performs under legislation covering waste licensing, waste licensing exemptions and producer responsibility and UK-wide legislation (as it pertains to Northern Ireland) covering end-of-life vehicles, waste batteries and accumulators and waste electrical and electronic equipment.

Section 67, which amends Article 27 of the Waste and Contaminated Land (Northern Ireland) Order 1997 to provide the Department with powers to give direction in specified circumstances to: registered carriers of controlled waste; keepers of controlled waste; or the owner or occupier of the land on which waste is being kept, in circumstances in which waste might be taken to an appropriate storage site in the first instance, or otherwise not directly treated or disposed of.

Section 71, which amends Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997 to reflect the transfer of functions from the Department of the Environment to the Department.

Section 89, which gives powers to the Defra Secretary of State (with the Department's consent) to make regulations about the substances to be taken into account in assessing the chemical status of surface water or groundwater, and to specify standards for those substances, or in relation to the chemical status of water bodies.

Section 91, which gives powers to the Department to make regulations about the substances to be taken into account in assessing the chemical status of surface water or groundwater, and to specify standards for those substances, or in relation to the chemical status of water bodies.

Section 140 and Schedule 21 (so far as relating to powers of a Northern Ireland department to make regulations under paragraph 2 of that Schedule), which provide powers allowing the Department or the Department for the Economy to amend the REACH Enforcement Regulations 2008.

Article 2(2) brings the following provisions into operation on 25 July 2022:

Section 48 and Schedule 2 (except for paragraph 8), Part 1 of which requires the Department to prepare, publish and report upon an environmental improvement plan, defined as, "a plan for significantly improving the natural environment". Part 2 of Schedule 2 requires the Department to prepare and publish a policy statement on environmental principles.

Article 2(3) brings the following provision into operation six months after the final policy statement on environmental principles is laid at the Northern Ireland Assembly:

Paragraph 8 of Schedule 2 to the Act, which places a statutory duty on all Northern Ireland departments and Ministers of the Crown, when making policy for Northern Ireland, to have due regard to the policy statement on environmental principles.

Article 3 is a saving provision for the Producer Responsibility Obligations (Packaging Waste) Regulations (Northern Ireland) 2007, made under powers in the Producer Responsibility Obligations (Northern Ireland) Order 1998, which are repealed by section 50(6) of the Environment Act 2021. It provides for the Regulations to remain in operation despite the repeal of their enabling powers and to have effect as if made under Schedules 4 and 6 to the Environment Act 2021.