
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.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a Northern Ireland Statutory Rule: *The Environment (2021 Act) (Commencement and Saving Provision) Order (Northern Ireland) 2022 No. 54*

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.