



# Environment Act 1995

## 1995 CHAPTER 25

### PART I

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

### CHAPTER III

#### MISCELLANEOUS, GENERAL AND SUPPLEMENTAL PROVISIONS RELATING TO THE NEW AGENCIES [F<sup>1</sup> AND THE NATURAL RESOURCES BODY FOR WALES]

#### *Additional general powers and duties*

#### **37 Incidental general functions.**

- (1) Each new Agency (that is to say, in this Part, the Agency or SEPA)—
  - (a) may do anything which, in its opinion, is calculated to facilitate, or is conducive or incidental to, the carrying out of its functions; and
  - (b) without prejudice to the generality of that power, may, for the purposes of, or in connection with, the carrying out of those functions, acquire and dispose of land and other property and carry out such engineering or building operations as it considers appropriate;and the Agency may institute criminal proceedings in England and Wales.
- (2) It shall be the duty of each new Agency to provide the Secretary of State or the Minister with such advice and assistance as he may request.
- (3) Subject to subsection (4) below, each new Agency may provide for any person, whether in or outside the United Kingdom, advice or assistance, including training facilities, as respects any matter in which that new Agency has skill or experience.
- (4) Without prejudice to any power of either new Agency apart from subsection (3) above to provide advice or assistance of the kind mentioned in that subsection, the power conferred by that subsection shall not be exercised in a case where the person for

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whom the advice or assistance is provided is outside the United Kingdom, except with the consent in writing of the appropriate Minister which consent may be given subject to such conditions as the Minister giving it thinks fit.

- (5) Each new Agency—
- (a) shall make arrangements for the carrying out of research and related activities (whether by itself or by others) in respect of matters to which its functions relate; and
  - (b) may make the results of any such research or related activities available to any person in return for payment of such fee as it considers appropriate.
- (6) Subsection (5) above shall not be taken as preventing a new Agency from making the results of any research available to the public free of charge whenever it considers it appropriate to do so.
- (7) Each new Agency may by agreement with any person charge that person a fee in respect of work done, or services or facilities provided, as a result of a request made by him for advice or assistance, whether of a general or specific character, in connection with any matter involving or relating to environmental licences.
- (8) Subsection (7) above—
- (a) is without prejudice to the generality of the powers of either new Agency to make charges; but
  - (b) is subject to any such express provision with respect to charging by the new Agency in question as is contained in the other provisions of this Part or in any other enactment.
- [<sup>F1</sup>(8A) In subsection (8) above, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]
- (9) In this section “engineering or building operations”, without prejudice to the generality of that expression, includes—
- (a) the construction, alteration, improvement, maintenance or demolition of any building or structure or of any reservoir, watercourse, dam, weir, well, borehole or other works; and
  - (b) the installation, modification or removal of any machinery or apparatus.

#### Textual Amendments

**F1** S. 37(8A) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), **sch. 3 para. 43(4)**; S.S.I. 2014/160, art. 2(1)(2)

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

**C1** S. 37(2)(4) functions cease to be exercisable (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), arts. 1(2), **6** (with art. 24)

#### Commencement Information

**I1** S. 37 wholly in force at 1.4.1996; s. 37 not in force at Royal Assent see s. 125(3); s. 37(1)(2)(9) in force at 28.7.1995 by [S.I. 1995/1983](#), **art. 2**; s. 37(3)-(8) in force at 1.4.1996 by [S.I. 1996/186](#), **art 3**

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### **38 Delegation of functions by Ministers etc. to the new Agencies.**

- (1) Agreements may be made between—
  - (a) any Minister of the Crown, and
  - (b) a new Agency,authorising the new Agency (or any of its employees) to exercise on behalf of that Minister, with or without payment, any eligible function of his.
- (2) An agreement under subsection (1) above shall not authorise the new Agency (or any of its employees) to exercise on behalf of a Minister of the Crown any function which consists of a power to make regulations or other instruments of a legislative character or a power to fix fees or charges.
- (3) An agreement under this section may provide for any eligible function to which it relates to be exercisable by the new Agency in question (or any of its employees)—
  - (a) either wholly or to such extent as may be specified in the agreement;
  - (b) either generally or in such cases or areas as may be so specified; or
  - (c) either unconditionally or subject to the fulfilment of such conditions as may be so specified.
- (4) Subsection (5) below applies where, by virtue of an agreement under this section, a new Agency (or any of its employees) is authorised to exercise any function of a Minister of the Crown.
- (5) Subject to subsection (6) below, anything done or omitted to be done by the new Agency (or an employee of the new Agency) in, or in connection with, the exercise or purported exercise of the function shall be treated for all purposes as done or omitted to be done by that Minister in his capacity as such.
- (6) Subsection (5) above shall not apply—
  - (a) for the purposes of so much of any agreement made between that Minister and the new Agency as relates to the exercise of the function; or
  - (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that subsection.
- (7) An agreement under this section shall not prevent a Minister of the Crown exercising any function to which the agreement relates.
- (8) Where a Minister of the Crown has power to include, in any arrangements which he makes in relation to the performance by him of an eligible function, provision for the making of payments to him—
  - (a) by other parties to the arrangements, or
  - (b) by persons who use any facilities or services provided by him pursuant to the arrangements or in relation to whom the function is otherwise exercisable,he may include in any such arrangements provision for the making of such payments to him or a new Agency in cases where the new Agency (or any of its employees) acts on his behalf by virtue of an agreement under this section.
- (9) The power conferred on a Minister of the Crown by subsection (1) above is in addition to any other power by virtue of which functions of his may be exercised by other persons on his behalf.
- (10) In this section—

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“eligible function” means any function of a Minister of the Crown which the Secretary of State, having regard to the functions conferred or imposed upon the new Agency in question under or by virtue of this Act or any other enactment, considers can appropriately be exercised by that new Agency (or any of its employees) on behalf of that Minister;

[<sup>F2</sup>“enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;]

“Minister of the Crown” has the same meaning as in the Ministers of the <sup>M1</sup>Crown Act 1975.

#### Textual Amendments

**F2** Words in s. 38(10) inserted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 43\(5\)](#); S.S.I. 2014/160, art. 2(1)(2)

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

**C2** S. 38 modified (30.6.1999) by S.I. 1999/1746, [arts. 1\(1\), 5\(1\)](#); S.I. 1998/3178, [art. 3](#)

**C3** S. 38 functions cease to be exercisable (with effect in accordance with art. 1(3) of the amending S.I.) by [The Natural Resources Body for Wales \(Consequential Provision\) Order 2013 \(S.I. 2013/1821\)](#), [arts. 1\(2\), 6](#) (with [art. 24](#))

#### Marginal Citations

**M1** 1975 c. 26.

### 39 **General duty of the [<sup>F3</sup>new Agencies][<sup>F3</sup>Agency] to have regard to costs and benefits in exercising powers.**

(1) [<sup>F4</sup>Each new][<sup>F4</sup>The] Agency—

- (a) in considering whether or not to exercise any power conferred upon it by or under any enactment, or
- (b) in deciding the manner in which to exercise any such power,

shall, unless and to the extent that it is unreasonable for it to do so in view of the nature or purpose of the power or in the circumstances of the particular case, take into account the likely costs and benefits of the exercise or non-exercise of the power or its exercise in the manner in question.

(2) The duty imposed upon [<sup>F5</sup>a new][<sup>F5</sup>the] Agency by subsection (1) above does not affect its obligation, nevertheless, to discharge any duties, comply with any requirements, or pursue any objectives, imposed upon or given to it otherwise than under this section.

#### Textual Amendments

**F3** Word in s. 39 title substituted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(10\)](#); S.S.I. 2014/160, art. 2(1)(2)

**F4** Word in s. 39(1) substituted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(9\)\(a\)](#); S.S.I. 2014/160, art. 2(1)(2)

**F5** Word in s. 39(2) substituted (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), [sch. 3 para. 14\(9\)\(b\)](#); S.S.I. 2014/160, art. 2(1)(2)

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#### 40 Ministerial directions to the new Agencies.

- (1) The appropriate Minister may give a new Agency directions of a general or specific character with respect to the carrying out of any of its functions.
- (2) The appropriate Minister may give a new Agency such directions of a general or specific character as he considers appropriate<sup>F6</sup> ...—
  - [<sup>F7</sup>(a) for securing that any [<sup>F8</sup>assimilated] obligation is met, or]
  - (b) [<sup>F9</sup>for the implementation of] any international agreement to which the United Kingdom is for the time being a party.
- (3) Any direction under subsection (2) above 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 direction shall be made available to the public; and
  - (b) notice shall be given—
    - (i) in the case of a direction given to the Agency, in the London Gazette,  
or
    - (ii) in the case of a direction given to SEPA, in the Edinburgh Gazette,
 of the giving of the direction and of where a copy of the direction may be obtained.
- (4) The provisions of subsection (3) above shall have effect in relation to any direction given to a new Agency under an enactment other than subsection (2) above<sup>F10</sup> ...—
  - [<sup>F11</sup>(a) for securing that any [<sup>F12</sup>assimilated] obligation is met, or]
  - (b) [<sup>F13</sup>for the implementation of] any international agreement to which the United Kingdom is for the time being a party,
 as those provisions have effect in relation to a direction given under subsection (2) above.
- (5) In determining—
  - (a) any appeal against, or reference or review of, a decision of a new Agency, or
  - (b) any application transmitted from a new Agency,
 the body or person making the determination shall be bound by any direction given under this section or any other enactment by a Minister of the Crown to the new Agency to the same extent as the new Agency.
- (6) Any power to give a direction under this section shall be exercisable, except in an emergency, only after consultation with the new Agency concerned.
- (7) Any power of the appropriate Minister to give directions to a new Agency otherwise than by virtue of this section shall be without prejudice to any power to give directions conferred by this section.
- (8) It is the duty of a new Agency to comply with any direction which is given to that new Agency by a Minister of the Crown under this section or any other enactment.
- [<sup>F14</sup>(9) In this section, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]
- [<sup>F15</sup>(9) For the purposes of this section, the “appropriate Minister” in relation to the Agency is—
  - (a) in any case not falling within paragraph (b), the Secretary of State;

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- (b) in the case of a direction under subsection (1)—
- (i) which would have any effect in Wales, or
  - (ii) which relates to water resources management, water supply, rivers or other watercourses, control of pollution of water resources, sewerage or land drainage, and which would have any effect in the catchment areas of the rivers Dee, Wye and Severn,
- the Secretary of State or the Welsh Ministers.
- (10) The Secretary of State may give a direction falling within subsection (9)(b) only after consulting the Welsh Ministers.
- (11) The Welsh Ministers may give a direction under this section only with the consent of the Secretary of State.]

#### Textual Amendments

- F6** Words in s. 40(2) omitted (31.12.2020) by virtue of [The Environment \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/458\)](#), regs. 1(1), **3(2)(a)(i)** (with reg. 8(1)(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F7** S. 40(2)(a) substituted (31.12.2020) by [The Environment \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/458\)](#), regs. 1(1), **3(2)(a)(ii)** (with reg. 8(1)(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F8** Word in s. 40(2)(a) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(S.I. 2023/1424\)](#), reg. 1(2), **Sch. para. 36(2)(a)**
- F9** Words in s. 40(2)(b) inserted (31.12.2020) by [The Environment \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/458\)](#), regs. 1(1), **3(2)(a)(iii)** (with reg. 8(1)(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F10** Words in s. 40(4) omitted (31.12.2020) by virtue of [The Environment \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/458\)](#), regs. 1(1), **3(2)(b)(i)** (with reg. 8(1)(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F11** S. 40(4)(a) substituted (31.12.2020) by [The Environment \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/458\)](#), regs. 1(1), **3(2)(b)(ii)** (with reg. 8(1)(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F12** Word in s. 40(4)(a) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendment\) Regulations 2023 \(S.I. 2023/1424\)](#), reg. 1(2), **Sch. para. 36(2)(a)**
- F13** Words in s. 40(4)(b) inserted (31.12.2020) by [The Environment \(Amendment etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/458\)](#), regs. 1(1), **3(2)(b)(iii)** (with reg. 8(1)(2)); 2020 c. 1, Sch. 5 para. 1(1)
- F14** S. 40(9) added (S.) (30.6.2014) by [Regulatory Reform \(Scotland\) Act 2014 \(asp 3\)](#), s. 61(2), **sch. 3 para. 43(6)**; S.S.I. 2014/160, art. 2(1)(2)
- F15** S. 40(9)-(11) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 371** (with Sch. 7)

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

- C4** S. 40 modified (30.6.1999) by [S.I. 1999/1746](#), **arts. 1(1), 5(2)**; [S.I. 1998/3178](#), **art. 3**
- C5** S. 40 modified (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(1)** (with reg. 1(c))
- C6** S. 40: transfer of functions (10.7.2008) by [The Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2008 \(S.I. 2008/1776\)](#), arts. 1(1), 2, **Sch.**
- C7** S. 40 modified (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(1)** (with reg. 1(c))

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 41(1)(s) inserted by [2021 c. 30 s. 57\(8\)](#)
- s. 82(1A) inserted by [2024 asc 2 s. 16\(3\)](#)
- s. 83B inserted by [2024 asc 2 s. 17\(1\)](#)
- s. 85(3)(e)(f) inserted by [2024 asc 2 s. 18\(b\)](#)
- Sch. 7 para. 7(4A)(4B) inserted by [2007 c. 28 Sch. 14 para. 4\(3\)](#)