



# 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*

#### **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.

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*Changes to legislation: Environment Act 1995, Section 38 is up to date with all changes known to be in force on or before 14 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

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- (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—
- “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>F1</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 Crown Act 1975.

#### Textual Amendments

**F1** 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)

**C1** S. 38 modified (30.6.1999) by [S.I. 1999/1746](#), [arts. 1\(1\)](#), 5(1); [S.I. 1998/3178](#), [art. 3](#)

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**C2** 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)

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**Marginal Citations**

**M1** 1975 c. 26.

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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\(3\)](#)