



# Environment Act 2021

## 2021 CHAPTER 30

### PART 1

#### ENVIRONMENTAL GOVERNANCE

### CHAPTER 1

#### IMPROVING THE NATURAL ENVIRONMENT

#### *Environmental targets*

### **1 Environmental targets**

- (1) The Secretary of State may by regulations set long-term targets in respect of any matter which relates to—
  - (a) the natural environment, or
  - (b) people's enjoyment of the natural environment.
- (2) The Secretary of State must exercise the power in subsection (1) so as to set a long-term target in respect of at least one matter within each priority area.
- (3) The priority areas are—
  - (a) air quality;
  - (b) water;
  - (c) biodiversity;
  - (d) resource efficiency and waste reduction.
- (4) A target set under this section must specify—
  - (a) a standard to be achieved, which must be capable of being objectively measured, and
  - (b) a date by which it is to be achieved.

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- (5) Regulations under this section may make provision about how the matter in respect of which a target is set is to be measured.
- (6) A target is a “long-term” target if the specified date is no less than 15 years after the date on which the target is initially set.
- (7) A target under this section is initially set when the regulations setting it come into force.
- (8) In this Part the “specified standard” and “specified date”, in relation to a target under this section, mean the standard and date (respectively) specified under subsection (4).
- (9) The Secretary of State may not by regulations under this section make any provision which, if contained in an Act of Senedd Cymru, would be within the legislative competence of the Senedd.

## **2 Environmental targets: particulate matter**

- (1) The Secretary of State must by regulations set a target (“the PM<sub>2.5</sub> air quality target”) in respect of the annual mean level of PM<sub>2.5</sub> in ambient air.
- (2) The PM<sub>2.5</sub> air quality target may, but need not, be a long-term target.
- (3) In this section “PM<sub>2.5</sub>” means particulate matter with an aerodynamic diameter not exceeding 2.5 micrometres.
- (4) Regulations setting the PM<sub>2.5</sub> air quality target may make provision defining “ambient air”.
- (5) The duty in subsection (1) is in addition to (and does not discharge) the duty in section 1(2) to set a long-term target in relation to air quality.
- (6) Section 1(4) to (9) applies to the PM<sub>2.5</sub> air quality target and to regulations under this section as it applies to targets set under section 1 and to regulations under that section.
- (7) In this Part “the PM<sub>2.5</sub> air quality target” means the target set under subsection (1).

## **3 Environmental targets: species abundance**

- (1) The Secretary of State must by regulations set a target (the “species abundance target”) in respect of a matter relating to the abundance of species.
- (2) The specified date for the species abundance target must be 31 December 2030.
- (3) Accordingly, the species abundance target is not a long-term target and the duty in subsection (1) is in addition to (and does not discharge) the duty in section 1(2) to set a long-term target in relation to biodiversity.
- (4) Before making regulations under subsection (1) which set or amend a target the Secretary of State must be satisfied that meeting the target, or the amended target, would halt a decline in the abundance of species.
- (5) Section 1(4) to (9) applies to the species abundance target and to regulations under this section as it applies to targets set under section 1 and to regulations under that section.
- (6) In this Part “the species abundance target” means the target set under subsection (1).

#### **4 Environmental targets: process**

- (1) Before making regulations under sections 1 to 3 the Secretary of State must seek advice from persons the Secretary of State considers to be independent and to have relevant expertise.
- (2) Before making regulations under sections 1 to 3 which set or amend a target the Secretary of State must be satisfied that the target, or amended target, can be met.
- (3) The Secretary of State may make regulations under sections 1 to 3 which revoke or lower a target (the “existing target”) only if satisfied that—
  - (a) meeting the existing target would have no significant benefit compared with not meeting it or with meeting a lower target, or
  - (b) because of changes in circumstances since the existing target was set or last amended the environmental, social, economic or other costs of meeting it would be disproportionate to the benefits.
- (4) Before making regulations under sections 1 to 3 which revoke or lower a target the Secretary of State must lay before Parliament, and publish, a statement explaining why the Secretary of State is satisfied as mentioned in subsection (3).
- (5) Regulations lower a target if, to any extent, they—
  - (a) replace the specified standard with a lower standard, or
  - (b) replace the specified date with a later date.
- (6) Regulations under section 2 may not revoke the PM<sub>2.5</sub> air quality target (but may amend it in accordance with this section).
- (7) For the purposes of this Part a target is met if the specified standard is achieved by the specified date.
- (8) Regulations under sections 1 to 3 are subject to the affirmative procedure.
- (9) A draft of a statutory instrument (or drafts of statutory instruments) containing regulations setting—
  - (a) each of the targets required by section 1(2),
  - (b) the PM<sub>2.5</sub> air quality target, and
  - (c) the species abundance target,must be laid before Parliament on or before 31 October 2022.

#### **5 Environmental targets: effect**

It is the duty of the Secretary of State to ensure that—

- (a) targets set under section 1 are met,
- (b) the PM<sub>2.5</sub> air quality target set under section 2 is met, and
- (c) the species abundance target set under section 3 is met.

#### **6 Environmental targets: reporting duties**

- (1) Regulations under section 1, 2 or 3 must specify a reporting date for any target set under that section.
- (2) On or before the reporting date the Secretary of State must lay before Parliament, and publish, a statement containing the required information about the target.

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- (3) The required information about a target is (as appropriate)—
  - (a) that the target has been met,
  - (b) that the target has not been met, or
  - (c) that the Secretary of State is not yet able to determine whether the target has been met, the reasons for that and the steps the Secretary of State intends to take in order to determine whether the target has been met.
- (4) Where the Secretary of State makes a statement that the target has not been met the Secretary of State must, before the end of the 12 month period beginning with the date on which the statement is laid, lay before Parliament, and publish, a report.
- (5) The report must—
  - (a) explain why the target has not been met, and
  - (b) set out the steps the Secretary of State has taken, or intends to take, to ensure the specified standard is achieved as soon as reasonably practicable.
- (6) Where the Secretary of State makes a statement that the Secretary of State is not yet able to determine whether the target has been met the Secretary of State must, before the end of the 6 month period beginning with the date on which the statement is laid, lay before Parliament, and publish, a further statement containing the required information.
- (7) Subsections (3) to (6) apply to further statements under subsection (6) as they apply to a statement under subsection (2).

## 7 **Environmental targets: review**

- (1) The Secretary of State must review targets set under sections 1 to 3 in accordance with this section.
- (2) The purpose of the review is to consider whether the significant improvement test is met.
- (3) The significant improvement test is met if meeting—
  - (a) the targets set under sections 1 to 3, and
  - (b) any other environmental targets which meet the conditions in subsection (8) and which the Secretary of State considers it appropriate to take into account, would significantly improve the natural environment in England.
- (4) Having carried out the review the Secretary of State must lay before Parliament, and publish, a report stating—
  - (a) whether the Secretary of State considers that the significant improvement test is met, and
  - (b) if the Secretary of State considers that the test is not met, the steps the Secretary of State intends to take in relation to the powers in sections 1 to 3 to ensure that it is met.
- (5) The first review must be completed by 31 January 2023.
- (6) Subsequent reviews must be completed before the end of the 5 year period beginning with the day on which the previous review was completed.
- (7) A review is completed when the Secretary of State has laid and published the report.

- (8) The conditions mentioned in subsection (3)(b) are that—
- (a) the target relates to an aspect of the natural environment in England or an area which includes England,
  - (b) it specifies a standard to be achieved which is capable of being objectively measured,
  - (c) it specifies a date by which the standard is to be achieved, and
  - (d) it is contained in legislation which forms part of the law of England and Wales.
- (9) In this section “England” includes—
- (a) the English inshore region, and
  - (b) the English offshore region,
- within the meaning of the Marine and Coastal Access Act 2009 (see section 322 of that Act).

### *Environmental improvement plans*

## **8 Environmental improvement plans**

- (1) The Secretary of State must prepare an environmental improvement plan.
- (2) An “environmental improvement plan” is a plan for significantly improving the natural environment in the period to which the plan relates.
- (3) That period must not be shorter than 15 years.
- (4) An environmental improvement plan must set out the steps Her Majesty’s Government intends to take to improve the natural environment in the period to which the plan relates.
- (5) It may also set out steps Her Majesty’s Government intends to take to improve people’s enjoyment of the natural environment in that period (and if it does so references in this Part to improving the natural environment, in relation to that plan, include improving people’s enjoyment of it).
- (6) The Secretary of State’s functions in relation to environmental improvement plans are not exercisable in relation to the natural environment in Wales.
- (7) The document entitled “A green future: our 25 year plan to improve the environment” published by Her Majesty’s Government on 11 January 2018 is to be treated as an environmental improvement plan prepared by the Secretary of State under this section.
- (8) References in this Part—
  - (a) to the first environmental improvement plan, are to that document;
  - (b) to the current environmental improvement plan, are to the environmental improvement plan for the time being in effect.

## **9 Annual reports on environmental improvement plans**

- (1) The Secretary of State must prepare annual reports on the implementation of the current environmental improvement plan.
- (2) An annual report must—

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- (a) describe what has been done, in the period to which the report relates, to implement the environmental improvement plan, and
  - (b) consider, having regard to any data obtained under section 16, whether the natural environment has, or particular aspects of it have, improved during that period.
- (3) In considering the matters in subsection (2)(b) an annual report must consider the progress that has been made towards achieving—
  - (a) any targets, or any relevant targets, set under sections 1 to 3, and
  - (b) any interim targets, or any relevant interim targets, set under sections 11 and 14.
- (4) The first annual report on the first environmental improvement plan may relate to any 12 month period that includes the day on which this section comes into force.
- (5) The first annual report on a subsequent environmental improvement plan must relate to the first 12 months of the period to which the plan relates.
- (6) Subsequent annual reports on an environmental improvement plan must relate to the 12 month period immediately following the 12 month period to which the previous annual report relates.
- (7) An annual report must be laid before Parliament before the end of the 4 month period beginning immediately after the last day of the period to which the report relates.
- (8) The Secretary of State must publish annual reports laid before Parliament under this section.

## **10 Reviewing and revising environmental improvement plans**

- (1) The Secretary of State must—
  - (a) review the current environmental improvement plan in accordance with this section, section 11 and section 12, and
  - (b) if the Secretary of State is required to revise the plan under section 11, or considers it appropriate to revise the plan as a result of the review, revise the plan.
- (2) The period to which a revised plan relates must end at the same time as the period to which the current plan relates.
- (3) The first review of the first environmental improvement plan must be completed by 31 January 2023.
- (4) The first review of a subsequent environmental improvement plan must be completed before the end of the 5 year period beginning with the day on which it replaces the previous plan (see section 13(4)).
- (5) Subsequent reviews of an environmental improvement plan must be completed before the end of the 5 year period beginning with the day on which the previous review was completed.
- (6) If as a result of a review the Secretary of State revises the environmental improvement plan, the Secretary of State must lay before Parliament—
  - (a) the revised environmental improvement plan, and
  - (b) a statement explaining the revisions and the reasons for them.

- (7) If as a result of a review the Secretary of State does not revise the environmental improvement plan, the Secretary of State must lay before Parliament a statement explaining that and the reasons for it.
- (8) The Secretary of State must publish the documents laid under subsection (6) or (7).
- (9) A review is completed when the Secretary of State has laid and published the documents mentioned in subsection (6) or (7).
- (10) References in this Act to an environmental improvement plan include a revised environmental improvement plan.

## **11 Reviewing and revising plans: interim targets**

- (1) On the first review of the first environmental improvement plan, the Secretary of State must revise the plan so as to—
  - (a) set at least one interim target in respect of each relevant matter, and
  - (b) secure that there is at all times, until the end of the 5 year period beginning with the relevant date, an interim target set by the plan in respect of each relevant matter.
- (2) On any other review of an environmental improvement plan, the Secretary of State must make any revisions to the plan which are necessary in order to—
  - (a) set at least one interim target in respect of any matter that has become a relevant matter since the previous review, and
  - (b) secure that there is at all times, until the end of the 5 year period beginning with the relevant date, an interim target set by the plan in respect of each relevant matter.
- (3) A “relevant matter” means any matter in respect of which there is a target under sections 1 to 3.
- (4) Subsection (2)(b) does not apply in respect of a matter if the specified date for the target under sections 1 to 3 in respect of that matter is before the end of the 5 year period beginning with the relevant date.
- (5) On a review of an environmental improvement plan, the Secretary of State may revise or replace any interim targets set by the plan in respect of a relevant matter (subject to subsection (2)(b), where it applies in respect of the matter).
- (6) An interim target in respect of a matter must specify—
  - (a) a standard to be achieved, which must be capable of being objectively measured, and
  - (b) a date by which it is to be achieved.
- (7) The date must be no later than the end of the 5 year period beginning with—
  - (a) for the first interim target in respect of a matter, the relevant date;
  - (b) for subsequent interim targets in respect of a matter, the later of the relevant date and the date specified for the previous interim target.
- (8) Before setting or revising an interim target in respect of a matter the Secretary of State must be satisfied that meeting the target, or the revised target, would make an appropriate contribution towards meeting the target under sections 1 to 3 in respect of that matter.

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(9) The “relevant date” is the date on which the review is completed.

## **12 Reviewing and revising plans: other requirements**

- (1) In reviewing an environmental improvement plan under section 10, the Secretary of State must consider—
  - (a) what has been done to implement the plan in the period since it was published or (if it has been reviewed before) last reviewed,
  - (b) whether, having regard to data obtained under section 16 and reports made by the OEP under section 28, the natural environment has, or particular aspects of it have, improved during that period, and
  - (c) whether Her Majesty’s Government should take further or different steps to improve the natural environment (compared to those set out in the plan) in the remainder of the period to which the plan relates.
- (2) In considering the matters in subsection (1)(b) the Secretary of State must consider the progress that has been made towards meeting—
  - (a) any targets, or any relevant targets, set under sections 1 to 3, and
  - (b) any interim targets, or any relevant interim targets, set under sections 11 and 14.
- (3) In considering the matters in subsection (1)(c) the Secretary of State must consider whether Her Majesty’s Government should take further or different steps towards meeting those targets (compared to those set out in the plan).

## **13 Renewing environmental improvement plans**

- (1) Before the end of the period to which an environmental improvement plan (the “old plan”) relates, the Secretary of State must prepare a new environmental improvement plan (the “new plan”) for a new period in accordance with this section, section 14 and section 15.
- (2) The new period must begin no later than immediately after the end of the period to which the old plan relates.
- (3) At or before the end of the period to which the old plan relates the Secretary of State must lay before Parliament, and publish, the new plan.
- (4) The new plan replaces the old plan when—
  - (a) it has been laid and published, and
  - (b) the period to which it relates has begun.

## **14 Renewing plans: interim targets**

- (1) A new plan prepared by the Secretary of State under section 13 must—
  - (a) set at least one interim target in respect of each relevant matter, and
  - (b) secure that there is at all times, until the end of the 5 year period beginning with the relevant date, an interim target set by the plan in respect of each relevant matter.
- (2) A “relevant matter” means any matter in respect of which there is a target under sections 1 to 3.



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- (3) Subsection (1) does not apply in respect of a matter if the specified date for the target under sections 1 to 3 in respect of that matter is before the end of the 5 year period beginning with the relevant date.
- (4) An interim target in respect of a matter must specify—
  - (a) a standard to be achieved, which must be capable of being objectively measured, and
  - (b) a date by which it is to be achieved.
- (5) The date must be no later than the end of the 5 year period beginning with—
  - (a) for the first interim target set by the new plan in respect of a matter, the relevant date;
  - (b) for subsequent interim targets set by the new plan in respect of a matter, the date specified for the previous interim target.
- (6) Before setting an interim target in respect of a matter, the Secretary of State must be satisfied that meeting it would make an appropriate contribution towards meeting the target under sections 1 to 3 in respect of that matter.
- (7) The “relevant date” is the first day of the period to which the new plan relates.
- (8) In this section references to the “new plan” are to be read in accordance with section 13.

## **15 Renewing plans: other requirements**

- (1) In preparing a new plan under section 13 the Secretary of State must consider—
  - (a) what has been done to implement the old plan,
  - (b) whether, having regard to data obtained under section 16 and reports made by the OEP under section 28, the natural environment has improved since the beginning of the period to which the old plan relates, and
  - (c) whether Her Majesty’s Government should take further or different steps (compared to those set out in the old plan) to improve the natural environment in the period to which the new environmental improvement plan relates.
- (2) In considering the matters in subsection (1)(b) the Secretary of State must consider the progress that has been made towards meeting—
  - (a) any targets set under sections 1 to 3, and
  - (b) any interim targets set under sections 11 and 14.
- (3) In considering the matters in subsection (1)(c) the Secretary of State must consider whether Her Majesty’s Government should take further or different steps (compared to those set out in the old plan) towards meeting any targets set under sections 1 to 3.
- (4) In this section references to the “new plan” and the “old plan” are to be read in accordance with section 13.

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### *Environmental monitoring*

## **16 Environmental monitoring**

- (1) The Secretary of State must make arrangements for obtaining such data about the natural environment as the Secretary of State considers appropriate for the purpose of monitoring—
  - (a) whether the natural environment is, or particular aspects of it are, improving in accordance with the current environmental improvement plan,
  - (b) the progress being made towards meeting any targets set under sections 1 to 3, and
  - (c) the progress being made towards meeting any interim targets set under sections 11 and 14.
- (2) The Secretary of State must lay before Parliament, and publish, a statement setting out the kinds of data to be obtained under subsection (1).
- (3) The first statement must be laid before the end of the 4 month period beginning with the day on which this section comes into force.
- (4) The Secretary of State may revise the statement at any time (and subsection (2) applies to any revised statement).
- (5) The Secretary of State must publish any data obtained under subsection (1).

### *Policy statement on environmental principles*

## **17 Policy statement on environmental principles**

- (1) The Secretary of State must prepare a policy statement on environmental principles in accordance with this section and section 18.
- (2) A “policy statement on environmental principles” is a statement explaining how the environmental principles should be interpreted and proportionately applied by Ministers of the Crown when making policy.
- (3) It may also explain how Ministers of the Crown, when interpreting and applying the environmental principles, should take into account other considerations relevant to their policy.
- (4) The Secretary of State must be satisfied that the statement will, when it comes into effect, contribute to—
  - (a) the improvement of environmental protection, and
  - (b) sustainable development.
- (5) In this Part “environmental principles” means the following principles—
  - (a) the principle that environmental protection should be integrated into the making of policies,
  - (b) the principle of preventative action to avert environmental damage,
  - (c) the precautionary principle, so far as relating to the environment,
  - (d) the principle that environmental damage should as a priority be rectified at source, and
  - (e) the polluter pays principle.

## **18 Policy statement on environmental principles: process**

- (1) The Secretary of State must prepare a draft of the policy statement on environmental principles.
- (2) The Secretary of State must consult such persons as the Secretary of State considers appropriate in relation to the draft statement.
- (3) The Secretary of State must lay the draft statement before Parliament.
- (4) If before the end of the 21 day period—
  - (a) either House of Parliament passes a resolution in respect of the draft statement, or
  - (b) a committee of either House of Parliament, or a joint committee of both Houses, makes recommendations in respect of the draft statement,the Secretary of State must produce a response and lay it before Parliament.
- (5) The Secretary of State must prepare and lay before Parliament the final statement, but not before—
  - (a) if subsection (4) applies, the day on which the Secretary of State lays the response required by that subsection, or
  - (b) otherwise, the end of the 21 day period.
- (6) The final statement has effect when it is laid before Parliament.
- (7) The Secretary of State must publish the statement when it comes into effect.
- (8) The “21 day period” is the period of 21 sitting days beginning with the first sitting day after the day on which the draft statement is laid under subsection (3).
- (9) “Sitting day” means a day on which both Houses of Parliament sit.
- (10) The requirements in subsections (1) and (2) may be met by the preparation of a draft statement, and consultation, before this section comes into force.
- (11) The Secretary of State may prepare a revised policy statement on environmental principles at any time (and subsections (1) to (9) apply in relation to any revised statement).

## **19 Policy statement on environmental principles: effect**

- (1) A Minister of the Crown must, when making policy, have due regard to the policy statement on environmental principles currently in effect.
- (2) Nothing in subsection (1) requires a Minister to do anything (or refrain from doing anything) if doing it (or refraining from doing it)—
  - (a) would have no significant environmental benefit, or
  - (b) would be in any other way disproportionate to the environmental benefit.
- (3) Subsection (1) does not apply to policy so far as relating to—
  - (a) the armed forces, defence or national security,
  - (b) taxation, spending or the allocation of resources within government, or
  - (c) Wales.
- (4) Subsection (1) applies to policy relating to Scotland only so far as relating to reserved matters.

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- (5) Section 14(2) of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (asp 4) (UK Ministers must have regard to guiding principles on the environment in making policies extending to Scotland) does not apply to policies so far as relating to reserved matters.
- (6) In this section “reserved matters” has the same meaning as in the Scotland Act 1998.

*Environmental protection: statements and reports*

**20 Statements about Bills containing new environmental law**

- (1) This section applies where a Minister of the Crown in charge of a Bill in either House of Parliament is of the view that the Bill as introduced into that House contains provision which, if enacted, would be environmental law.
- (2) The Minister must, before Second Reading of the Bill in the House in question, make—
- (a) a statement to the effect that in the Minister’s view the Bill contains provision which, if enacted, would be environmental law, and
  - (b) a statement under subsection (3) or (4).
- (3) A statement under this subsection is a statement to the effect that in the Minister’s view the Bill will not have the effect of reducing the level of environmental protection provided for by any existing environmental law.
- (4) A statement under this subsection is a statement to the effect that—
- (a) the Minister is unable to make a statement under subsection (3), but
  - (b) Her Majesty’s Government nevertheless wishes the House to proceed with the Bill.
- (5) In making a statement under this section the Minister may in particular take into account the possibility that a Bill, by making provision that is different from existing environmental law, might provide for the same or a greater level of environmental protection.
- (6) For the purposes of this section—
- (a) references to environmental protection provided for by any existing environmental law includes any protection which could be provided for under powers conferred by the existing environmental law, and
  - (b) in considering the effect of a Bill, any powers conferred by the Bill to provide for any environmental protection may be taken into account.
- (7) A statement under this section must be in writing and be published in such manner as the Minister considers appropriate.
- (8) “Existing environmental law”, in relation to a statement under this section, means environmental law existing at the time that the Bill to which the statement relates is introduced into the House in question, whether or not the environmental law is in force.

**21 Reports on international environmental protection legislation**

- (1) The Secretary of State must report on developments in international environmental protection legislation which appear to the Secretary of State to be significant.

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- (2) “International environmental protection legislation” means legislation of countries and territories outside the United Kingdom, and international organisations, that is mainly concerned with environmental protection.
- (3) The Secretary of State must report under this section in relation to each reporting period.
- (4) The reporting periods are—
  - (a) the 2 year period beginning with the day on which this section comes into force, and
  - (b) each subsequent 2 year period.
- (5) A report under this section may consider—
  - (a) particular countries, territories or international organisations, or
  - (b) particular aspects of environmental protection,as the Secretary of State considers appropriate.
- (6) A report under this section must be laid before Parliament, and published, as soon as reasonably practicable after the end of the reporting period to which it relates.

## CHAPTER 2

### THE OFFICE FOR ENVIRONMENTAL PROTECTION

#### *The Office for Environmental Protection*

#### **22 The Office for Environmental Protection**

- (1) A body corporate called the Office for Environmental Protection is established.
- (2) In this Act that body is referred to as “the OEP”.
- (3) Schedule 1 makes further provision about the OEP.

#### **23 Principal objective of the OEP and exercise of its functions**

- (1) The principal objective of the OEP in exercising its functions is to contribute to—
  - (a) environmental protection, and
  - (b) the improvement of the natural environment.
- (2) The OEP must—
  - (a) act objectively and impartially, and
  - (b) have regard to the need to act proportionately and transparently.
- (3) The OEP must prepare a strategy that sets out how it intends to exercise its functions.
- (4) In particular, the strategy must set out—
  - (a) how the OEP will further its principal objective,
  - (b) how the OEP will act objectively and impartially, and
  - (c) how the OEP will have regard to the need to act proportionately and transparently.

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- (5) The strategy must also set out—
  - (a) how the OEP intends to avoid any overlap between the exercise of its functions and the exercise by the Committee on Climate Change of that committee’s functions, and
  - (b) how the OEP intends to co-operate with devolved environmental governance bodies.
- (6) The strategy must contain an enforcement policy that sets out—
  - (a) how the OEP intends to determine whether failures to comply with environmental law are serious for the purposes of sections 33(1)(b) and (2)(b), 35(1)(b), 36(1)(b), 38(1)(b) and 39(1)(a) and (7),
  - (b) how the OEP intends to determine whether damage to the natural environment or to human health is serious for the purposes of section 39(2),
  - (c) how the OEP intends to exercise its enforcement functions in a way that respects the integrity of other statutory regimes (including statutory provision for appeals),
  - (d) how the OEP intends to avoid any overlap between the exercise of its functions under sections 32 to 34 (complaints) and the exercise by each relevant ombudsman of their functions, and
  - (e) how the OEP intends to prioritise cases.
- (7) In considering its enforcement policy the OEP must have regard to the particular importance of prioritising cases that it considers have or may have national implications, and the importance of prioritising cases—
  - (a) that relate to ongoing or recurrent conduct,
  - (b) that relate to conduct that the OEP considers may cause (or has caused) serious damage to the natural environment or to human health, or
  - (c) that the OEP considers may raise a point of environmental law of general public importance.
- (8) The OEP’s “enforcement functions” are its functions under sections 32 to 41.
- (9) For the purposes of this Part, each of the following is a “relevant ombudsman”—
  - (a) the Commission for Local Administration in England;
  - (b) the Parliamentary Commissioner for Administration.

## **24 The OEP’s strategy: process**

- (1) The OEP must—
  - (a) arrange for the strategy prepared under section 23 to be laid before Parliament, and
  - (b) publish it.
- (2) The OEP may revise the strategy at any time (and subsection (1) applies to any revised strategy).
- (3) The OEP must review the strategy at least once in every review period.
- (4) “Review period” means—
  - (a) in relation to the first review, the period of 3 years beginning with the day on which the strategy was first published, and

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- (b) in relation to subsequent reviews, the period of 3 years beginning with the day on which the previous review was completed.
- (5) Before preparing, revising or reviewing the strategy, the OEP must consult such persons as it considers appropriate.

## **25 Guidance on the OEP’s enforcement policy and functions**

- (1) The Secretary of State may issue guidance to the OEP on the matters listed in section 23(6) (OEP’s enforcement policy).
- (2) The OEP must have regard to the guidance in—
  - (a) preparing its enforcement policy, and
  - (b) exercising its enforcement functions.
- (3) The OEP’s “enforcement functions” are its functions under sections 32 to 41.
- (4) Before issuing the guidance, the Secretary of State must—
  - (a) prepare a draft, and
  - (b) lay the draft before Parliament.
- (5) If before the end of the 21 day period—
  - (a) either House of Parliament passes a resolution in respect of the draft guidance, or
  - (b) a committee of either House of Parliament, or a joint committee of both Houses, makes recommendations in respect of the draft guidance,the Secretary of State must produce a response and lay it before Parliament.
- (6) The Secretary of State may prepare and lay before Parliament the final guidance, but not before—
  - (a) if subsection (5) applies, the day on which the Secretary of State 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 Parliament.
- (8) The Secretary of State 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 both Houses of Parliament sit.
- (11) The Secretary of State may revise the guidance at any time (and subsections (4) to (10) apply in relation to any revised guidance).

## **26 Memorandum of understanding**

- (1) The OEP and the Committee on Climate Change must prepare a memorandum of understanding.
- (2) The memorandum must set out how the OEP and the Committee intend to co-operate with one another and avoid overlap between the exercise by the OEP of its functions and the exercise by the Committee of its functions.

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## **27 Co-operation duties of public authorities and the OEP**

- (1) A person whose functions include functions of a public nature must co-operate with the OEP, and give it such reasonable assistance as it requests (including the provision of information), in connection with the exercise of its functions under this Act.
- (2) Subsection (1) does not apply to—
  - (a) a court or tribunal,
  - (b) either House of Parliament,
  - (c) a devolved legislature,
  - (d) the Scottish Ministers, the Welsh Ministers, a Northern Ireland department or a Minister within the meaning of the Northern Ireland Act 1998,
  - (e) a person exercising a parliamentary function, or
  - (f) a person whose only public functions are devolved functions.
- (3) A person whose public functions include devolved functions 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 that are not devolved functions.
- (4) If the OEP considers that a particular exercise of its functions may be relevant to the exercise of a devolved environmental governance function by a devolved environmental governance body, the OEP must consult that body.

### *The OEP's scrutiny and advice functions*

## **28 Monitoring and reporting on environmental improvement plans and targets**

- (1) The OEP must monitor progress—
  - (a) in improving the natural environment in accordance with the current environmental improvement plan,
  - (b) towards meeting any targets set under sections 1 to 3, and
  - (c) towards meeting any interim targets set under sections 11 and 14.
- (2) The OEP must prepare a progress report for each annual reporting period.
- (3) A progress report for an annual reporting period is a report on progress made in that period in or towards the matters listed in subsection (1).
- (4) An annual reporting period is a period for which the Secretary of State must prepare a report under section 9 (a “section 9 report”).
- (5) In reporting on progress made in an annual reporting period, the OEP must consider—
  - (a) the section 9 report for that period,
  - (b) the data published by the Secretary of State under section 16 that relates to that period, and
  - (c) any other reports, documents or information it considers appropriate.
- (6) A progress report for an annual reporting period may include—
  - (a) consideration of how progress could be improved, and
  - (b) consideration of the adequacy of the data published by the Secretary of State under section 16.
- (7) The OEP must—



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- (a) arrange for its reports under this section to be laid before Parliament, and
  - (b) publish them.
- (8) A progress report for an annual reporting period must be laid no later than 6 months after the section 9 report for that period is laid before Parliament.
- (9) The Secretary of State must—
- (a) respond to a report under this section, and
  - (b) lay before Parliament, and publish, a copy of the response.
- (10) Where a report under this section contains a recommendation for how progress could be improved, the response must address that recommendation.
- (11) The response—
- (a) must be laid no later than 12 months after the report is laid, and
  - (b) may be included in a section 9 report.

## **29 Monitoring and reporting on environmental law**

- (1) The OEP must monitor the implementation of environmental law.
- (2) The OEP may report on any matter concerned with the implementation of environmental law.
- (3) But the OEP must not monitor the implementation of, or report on, a matter within the remit of the Committee on Climate Change.
- (4) A matter is within the remit of the Committee on Climate Change if it is a matter on which the Committee is, or may be, required to advise or report under Part 1, sections 34 to 36, or section 48 of the Climate Change Act 2008.
- (5) The OEP must—
  - (a) arrange for its reports under this section to be laid before Parliament, and
  - (b) publish them.
- (6) The Secretary of State must—
  - (a) respond to a report under this section, and
  - (b) lay before Parliament, and publish, a copy of the response.
- (7) The response to a report under this section must be laid no later than 3 months after the report is laid.

## **30 Advising on changes to environmental law etc**

- (1) The OEP must give advice to a Minister of the Crown about—
  - (a) any proposed change to environmental law, or
  - (b) any other matter relating to the natural environment, on which the Minister requires it to give advice.
- (2) The Minister may specify matters which the OEP is to take into account in giving the required advice.
- (3) The OEP may give advice to a Minister of the Crown about any changes to environmental law proposed by a Minister of the Crown.

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- (4) Advice under this section is to be given in writing to the Minister concerned.
- (5) The OEP must publish—
  - (a) its advice, and
  - (b) if the advice is given under subsection (1), a statement of the matter on which it was required to give advice and any matters specified under subsection (2).
- (6) The Minister concerned may, if the Minister thinks fit, lay before Parliament—
  - (a) the advice, and
  - (b) any response the Minister may make to the advice.

### *The OEP's enforcement functions*

## **31 Failure of public authorities to comply with environmental law**

- (1) Sections 32 to 41 make provision about functions of the OEP in relation to failures by public authorities to comply with environmental law.
- (2) For the purposes of those sections, a reference to a public authority failing to comply with environmental law means the following conduct by that authority—
  - (a) unlawfully failing to take proper account of environmental law when exercising its functions;
  - (b) unlawfully exercising, or failing to exercise, any function it has under environmental law.
- (3) In this Part “public authority” means a person carrying out any function of a public nature that is not a devolved function, a parliamentary function or a function of any of the following persons—
  - (a) the OEP;
  - (b) a court or tribunal;
  - (c) either House of Parliament;
  - (d) a devolved legislature;
  - (e) the Scottish Ministers, the Welsh Ministers, a Northern Ireland department or a Minister within the meaning of the Northern Ireland Act 1998.

## **32 Complaints**

- (1) A person may make a complaint to the OEP under this section if the person believes that a public authority has failed to comply with environmental law.
- (2) The OEP must prepare and publish a document which sets out the procedure by which complaints can be made.
- (3) A complaint under this section must be made in accordance with that procedure (as most recently published).
- (4) A complaint under this section may not be made by any person whose functions include functions of a public nature.
- (5) A complaint about a public authority may not be made under this section if—
  - (a) the authority operates a procedure for considering complaints (“an internal complaints procedure”) under which the complaint could be considered, and

- (b) that procedure has not been exhausted.
- (6) A complaint under this section may not be made after the later of—
  - (a) the end of the 1 year period beginning with the day on which the alleged failure that is the subject of the complaint last occurred, and
  - (b) if the substance of the complaint was subject to an internal complaints procedure, the end of the 3 month period beginning with the day on which that procedure was exhausted.
- (7) The OEP may waive the time limit in subsection (6) if it considers that there are exceptional reasons for doing so.

### **33 Investigations**

- (1) The OEP may carry out an investigation under this section if it receives a complaint made under section 32 that, in its view, indicates that—
  - (a) a public authority may have failed to comply with environmental law, and
  - (b) if it has, the failure would be a serious failure.
- (2) The OEP may carry out an investigation under this section without having received such a complaint if it has information that, in its view, indicates that—
  - (a) a public authority may have failed to comply with environmental law, and
  - (b) if it has, the failure would be a serious failure.
- (3) An investigation under this section is an investigation into whether the public authority has failed to comply with environmental law.
- (4) The OEP must notify the public authority of the commencement of the investigation.
- (5) The OEP must prepare a report on the investigation and provide it to the public authority.
- (6) The OEP is not required to prepare a report until it has concluded that it intends to take no further steps under this Chapter in relation to the alleged failure to comply with environmental law that is the subject of the investigation.
- (7) The OEP is not required to prepare a report if it has applied for an environmental review, judicial review or statutory review (see sections 38 and 39) in relation to the alleged failure.
- (8) The report must set out—
  - (a) whether the OEP considers that the public authority has failed to comply with environmental law,
  - (b) the reasons the OEP came to that conclusion, and
  - (c) any recommendations the OEP may have (whether generally or for the public authority) in light of those conclusions.
- (9) The OEP may publish the report or parts of it.
- (10) If the public authority is not a Minister of the Crown, the OEP must also—
  - (a) notify the relevant Minister of the commencement of the investigation, and
  - (b) provide the relevant Minister with the report prepared under subsection (5).
- (11) In this Part “the relevant Minister”, in relation to a failure (or alleged failure) of a public authority to comply with environmental law, means the Minister of the Crown

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that the OEP considers appropriate having regard to the nature of the public authority and the nature of the failure.

### **34 Duty to keep complainants informed**

- (1) Where a person makes a complaint to the OEP alleging that a public authority has failed to comply with environmental law, the OEP must keep the complainant informed about its handling of the complaint.
- (2) In particular, the OEP must—
  - (a) notify the complainant if it does not intend to consider the complaint because the complaint was not made in accordance with section 32;
  - (b) notify the complainant if it has concluded that it will not be commencing an investigation under section 33 in relation to the complaint;
  - (c) notify the complainant if it commences an investigation under section 33 in relation to the complaint;
  - (d) if such an investigation is commenced, notify the complainant—
    - (i) where it provides a report under section 33(5) to the public authority that is the subject of the investigation, that it has provided it;
    - (ii) where it applies for an environmental review (see section 38), for permission to apply for judicial review or for statutory review (see section 39), in relation to the alleged failure to comply with environmental law that is the subject of the investigation, that it has made such an application;
  - (e) provide the complainant with a copy of any document published under section 33(9) in relation to any investigation in relation to the complaint.

### **35 Information notices**

- (1) The OEP may give an information notice to a public authority if—
  - (a) the OEP has reasonable grounds for suspecting that the authority has failed to comply with environmental law, and
  - (b) it considers that the failure, if it occurred, would be serious.
- (2) An information notice is a notice which—
  - (a) describes an alleged failure of a public authority to comply with environmental law,
  - (b) explains why the OEP considers that the alleged failure, if it occurred, would be serious, and
  - (c) requests that the authority provide such information relating to the allegation as may be specified in the notice.
- (3) The recipient of an information notice must—
  - (a) respond in writing to the notice, and
  - (b) so far as is reasonably practicable, provide the OEP with the information requested in the notice.
- (4) The recipient of an information notice must comply with subsection (3) by—
  - (a) the end of the 2 month period beginning with the day on which the notice was given, or
  - (b) such later date as may be specified in the notice.

- (5) The written response to an information notice must set out—
  - (a) the recipient’s response to the allegation described in the notice, and
  - (b) what steps (if any) the recipient intends to take in relation to the allegation.
- (6) The OEP may—
  - (a) withdraw an information notice;
  - (b) give more than one information notice in respect of the same alleged failure of a public authority to comply with environmental law.
- (7) Where the OEP intends to give an information notice to a public authority in respect of an alleged failure to comply with environmental law which relates to emissions of greenhouse gases (within the meaning of the Climate Change Act 2008), the OEP—
  - (a) must notify the Committee on Climate Change of its intention before it gives the notice to the authority, and
  - (b) must provide that Committee with such information relating to the alleged failure as the OEP considers appropriate.

### **36 Decision notices**

- (1) The OEP may give a decision notice to a public authority if—
  - (a) the OEP is satisfied, on the balance of probabilities, that the authority has failed to comply with environmental law, and
  - (b) it considers that the failure is serious.
- (2) A decision notice is a notice that—
  - (a) describes a failure of a public authority to comply with environmental law,
  - (b) explains why the OEP considers that the failure is serious, and
  - (c) sets out the steps the OEP considers the authority should take in relation to the failure (which may include steps designed to remedy, mitigate or prevent reoccurrence of the failure).
- (3) The recipient of a decision notice must respond in writing to that notice by—
  - (a) the end of the 2 month period beginning with the day on which the notice was given, or
  - (b) such later date as may be specified in the notice.
- (4) The written response to a decision notice must set out—
  - (a) whether the recipient agrees that the failure described in the notice occurred,
  - (b) whether the recipient intends to take the steps set out in the notice, and
  - (c) what other steps (if any) the recipient intends to take in relation to the failure described in the notice.
- (5) The OEP—
  - (a) may not give a decision notice to a public authority unless it has first given at least one information notice relating to the failure of the authority to comply with environmental law that is described in the decision notice;
  - (b) may withdraw a decision notice.

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### **37 Linked notices**

- (1) If the OEP gives an information notice or a decision notice to more than one public authority in respect of the same or similar conduct, it may determine that those notices are linked.
- (2) A Minister of the Crown may request that the OEP determine that information notices or decision notices are linked and the OEP must have regard to that request.
- (3) The OEP must provide the recipient of an information notice or a decision notice (a “principal notice”) with a copy of every information notice or decision notice which is linked to it (and such a notice is referred to in this section as a “linked notice”).
- (4) The OEP must provide the recipient of a principal notice with a copy of any relevant correspondence, relating to a linked notice, between the OEP and the recipient of that linked notice.
- (5) The OEP must provide the recipient of a principal notice with a copy of any relevant correspondence between the OEP and the relevant Minister that relates to a linked notice.
- (6) Subsection (5) does not apply where either the recipient of the principal notice or the linked notice is a Minister of the Crown.
- (7) The obligation to provide a copy of any notice or correspondence under this section does not apply where the OEP considers that in the circumstances it would not be in the public interest to do so.
- (8) For the purposes of this section, correspondence is relevant if—
  - (a) it is not correspondence in connection with an environmental review or any other legal proceedings (such as judicial review), and
  - (b) it is not correspondence sent by virtue of section 40(1)(a) or (b).

### **38 Environmental review**

- (1) Where the OEP has given a decision notice to a public authority it may apply to the court for an environmental review, but only if—
  - (a) it is satisfied, on the balance of probabilities, that the authority has failed to comply with environmental law, and
  - (b) it considers that the failure is serious.
- (2) An environmental review is a review of alleged conduct of the authority that is described in the decision notice as constituting a failure to comply with environmental law.
- (3) An application for an environmental review may not be made—
  - (a) before the earlier of—
    - (i) the end of the period within which the authority must respond to the decision notice in accordance with section 36(3), and
    - (ii) the date on which the OEP receives the authority’s response to that notice, or
  - (b) before the expiry of any time limit which applies to the commencement of judicial review or other similar legal proceedings for questioning the alleged conduct.

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- (4) Any restriction imposed by or under any other enactment on questioning the conduct of a public authority in legal proceedings does not apply to an environmental review.
- (5) On an environmental review the court must determine whether the authority has failed to comply with environmental law, applying the principles applicable on an application for judicial review.
- (6) If the court finds that the authority has failed to comply with environmental law, it must make a statement to that effect (a “statement of non-compliance”).
- (7) A statement of non-compliance does not affect the validity of the conduct in respect of which it is given.
- (8) Where the court makes a statement of non-compliance it may grant any remedy that could be granted by it on a judicial review other than damages, but only if Condition A or Condition B is met.
- (9) Condition A is that the court is satisfied that granting the remedy would not—
  - (a) be likely to cause substantial hardship to, or substantially prejudice the rights of, any person other than the authority, or
  - (b) be detrimental to good administration.
- (10) Condition B is that Condition A is not met but the court is satisfied that—
  - (a) granting the remedy is necessary in order to prevent or mitigate serious damage to the natural environment or to human health, and
  - (b) there is an exceptional public interest reason to grant it.
- (11) In deciding whether to grant a remedy the court must (subject to subsection (8)) apply the principles applicable on an application for judicial review; but this does not require the court to apply section 31(2A) of the Senior Courts Act 1981 (High Court to refuse to grant relief where the outcome for the applicant not substantially different) on an environmental review in England and Wales.
- (12) If, on an environmental review, the court has made a statement of non-compliance in respect of a public authority, and the statement has not been overturned on appeal, the authority must publish a statement that sets out the steps it intends to take in light of the review.
- (13) A statement under subsection (12) must be published before the end of the 2 month period beginning with the day the review (including any appeal) concludes.
- (14) In this section—
  - “the court” means—
    - (a) in relation to an environmental review arising under the law of England and Wales or Northern Ireland, the High Court, or
    - (b) in relation to an environmental review arising under the law of Scotland, the Court of Session;
  - “enactment” has the same meaning as in the European Union (Withdrawal) Act 2018;
  - “the principles applicable on an application for judicial review” means, in relation to an environmental review, the principles that would apply on an application for judicial review in the jurisdiction under which the environmental review arises;
  - “remedy” includes any relief or order.

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### **39 Judicial review: powers to apply in urgent cases and to intervene**

- (1) The OEP may apply for judicial review, or a statutory review, in relation to conduct of a public authority (whether or not it has given an information notice or a decision notice to the authority in respect of that conduct) if—
  - (a) the OEP considers that the conduct constitutes a serious failure to comply with environmental law, and
  - (b) the urgency condition is met.
- (2) The urgency condition is that making an application under subsection (1) (rather than proceeding under sections 35 to 38) is necessary to prevent, or mitigate, serious damage to the natural environment or to human health.
- (3) Section 31(2A), (3C) and (3D) of the Senior Courts Act 1981 (High Court to refuse to grant leave or relief where the outcome for the applicant not substantially different) does not apply to an application for judicial review made under subsection (1) in England and Wales.
- (4) If, on an application for judicial review or a statutory review made by virtue of subsection (1), there is a finding that a public authority has failed to comply with environmental law, and the finding has not been overturned on appeal, the authority must publish a statement that sets out the steps it intends to take in light of the finding.
- (5) A statement under subsection (4) must be published before the end of the 2 month period beginning with the day the proceedings relating to the application for judicial review or the statutory review (including any appeal) conclude.
- (6) Subsection (7) applies to proceedings (including any appeal) that—
  - (a) are in respect of an application for judicial review or a statutory review, and
  - (b) relate to an alleged failure by a public authority to comply with environmental law (however the allegation is framed in those proceedings).
- (7) If the OEP considers that the alleged failure, if it occurred, would be serious, it may apply to intervene in the proceedings (whether it considers that the public authority has, or has not, failed to comply with environmental law).
- (8) In this Part—
  - (a) except in section 38, reference to an application for judicial review includes an application for the permission of the High Court or, as the case may be, the Court of Session to apply for judicial review;
  - (b) “statutory review” means a claim for statutory review under—
    - (i) section 287 or 288 of the Town and Country Planning Act 1990,
    - (ii) section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990,
    - (iii) section 22 of the Planning (Hazardous Substances) Act 1990, or
    - (iv) section 113 of the Planning and Compulsory Purchase Act 2004.

### **40 Duty of the OEP to involve the relevant Minister**

- (1) Where the recipient of an information notice or a decision notice is not a Minister of the Crown, the OEP must—
  - (a) provide the relevant Minister with—
    - (i) a copy of the notice and,



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- (ii) a copy of any correspondence between the OEP and the recipient of the notice that relates to the notice (apart from correspondence sent by virtue of paragraph (b)), and
  - (b) provide the recipient of the notice with a copy of any correspondence between the OEP and the relevant Minister that relates to the notice (apart from correspondence sent by virtue of paragraph (a)).
- (2) The obligation to provide a copy of any notice or correspondence under subsection (1) does not apply where the OEP considers that in the circumstances it would not be in the public interest to do so.
- (3) Where the OEP makes an application for an environmental review, judicial review or statutory review in which the relevant Minister is not a party, it must provide the relevant Minister with—
  - (a) a copy of the application, and
  - (b) a statement of whether the OEP considers the relevant Minister should participate in the review (for example, by applying to be a party).

#### **41 Public statements**

- (1) Where the OEP gives an information notice or a decision notice, applies for an environmental review, judicial review or statutory review or applies to intervene in a judicial review or statutory review, it must publish a statement that—
  - (a) states that the OEP has taken that step,
  - (b) describes the failure (or alleged failure) of a public authority to comply with environmental law in relation to which that step was taken, and
  - (c) sets out such further information as the OEP considers appropriate.
- (2) Subsection (1) does not apply if the OEP considers that in the circumstances it would not be in the public interest to publish a statement.

#### *Information*

#### **42 Disclosures to the OEP**

- (1) No obligation of secrecy imposed by statute or otherwise prevents a person from—
  - (a) in accordance with section 27(1), providing the OEP with information in connection with an investigation under section 33, an information notice or a decision notice, or
  - (b) providing information to the OEP in accordance with section 35(3)(b).
- (2) But nothing in this Part—
  - (a) requires a person to provide the OEP with information that the person would be entitled to refuse to provide in civil proceedings on grounds of legal professional privilege (or, in Scotland, confidentiality of communications), or
  - (b) requires a person to provide the OEP with information that the person would be entitled, or required by any rule of law, to refuse to provide in civil proceedings on grounds of public interest immunity.
- (3) No obligation of secrecy imposed by statute or otherwise prevents a relevant ombudsman from providing information to the OEP—

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- (a) for purposes connected with the exercise of the OEP’s functions under section 33;
  - (b) for purposes connected with the co-ordination of the OEP’s functions that relate to investigations under section 33 and the ombudsman’s functions that relate to investigations by the ombudsman.
- (4) Nothing in this Part requires or authorises a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the duties imposed and powers conferred by this Part).
- (5) In this section “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).

### **43 Confidentiality of proceedings**

- (1) The OEP must not disclose—
- (a) information obtained under section 27(1) or 35(3)(b), or
  - (b) correspondence between the OEP and a public authority that—
    - (i) relates to a particular information notice or decision notice, or
    - (ii) is, or contains, such a notice.
- (2) Subsection (1) does not apply to a disclosure—
- (a) other than a disclosure of an information notice or a decision notice, made with the consent of the person who provided the information or correspondence;
  - (b) made for purposes connected with the exercise of the OEP’s functions under section 33 (investigations);
  - (c) made for purposes connected with the co-ordination of the OEP’s functions that relate to investigations under section 33 and a relevant ombudsman’s functions that relate to investigations by that ombudsman;
  - (d) made for the purposes of any publication of a report (or part of it) on an investigation under section 33;
  - (e) made for purposes connected with the exercise of the OEP’s functions under sections 35 to 41 (enforcement);
  - (f) made to a devolved environmental governance body for purposes connected with the exercise of a devolved environmental governance function;
  - (g) made for purposes connected with the protection of the natural environment in a country or territory outside the United Kingdom, to an authority of that country or territory, or an international organisation, that has functions in connection with the protection of the natural environment in that country or territory;
  - (h) of information, or correspondence, that relates only to a matter in relation to which the OEP has concluded that it intends to take no further steps under this Chapter.
- (3) A public authority must not disclose correspondence between the OEP and that, or any other, public authority that—
- (a) relates to a particular information notice or decision notice, or
  - (b) is, or contains, such a notice.
- (4) Subsection (3) does not apply to a disclosure—
- (a) made—

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- (i) in the case of a disclosure of correspondence between another public authority and the OEP other than correspondence that is, or contains, an information notice or a decision notice, with the consent of that authority and the OEP, or
    - (ii) in any other case, with the specific or general consent of the OEP;
  - (b) made for purposes connected with co-operating with any investigation under section 33;
  - (c) made for purposes connected with responding to any information notice or decision notice;
  - (d) made for purposes connected with any proceedings in relation to an environmental review, judicial review or statutory review.
- (5) The OEP may not give a person consent to disclose an information notice or a decision notice unless that notice relates only to a matter in relation to which the OEP has concluded that it intends to take no further steps under this Chapter.
- (6) If a public authority requests the consent of the OEP to disclose correspondence that relates only to a matter in relation to which the OEP has concluded that it intends to take no further steps under this Chapter, the OEP may not withhold that consent.
- (7) If information referred to in subsection (1) and held by the OEP, or referred to in subsection (3) and held by a public authority, is environmental information for the purposes of the Environmental Information Regulations 2004 (S.I. 2004/3391) or the Environmental Information (Scotland) Regulations 2004 (S.S.I. 2004/520), it is held by that person, for the purposes of the application of those regulations to that information, in connection with confidential proceedings.

## CHAPTER 3

### INTERPRETATION OF PART 1

#### 44 Meaning of “natural environment”

In this Part the “natural environment” means—

- (a) plants, wild animals and other living organisms,
  - (b) their habitats,
  - (c) land (except buildings or other structures), air and water,
- and the natural systems, cycles and processes through which they interact.

#### 45 Meaning of “environmental protection”

In this Part “environmental protection” means—

- (a) protection of the natural environment from the effects of human activity;
- (b) protection of people from the effects of human activity on the natural environment;
- (c) maintenance, restoration or enhancement of the natural environment;
- (d) monitoring, assessing, considering, advising or reporting on anything in paragraphs (a) to (c).

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#### **46 Meaning of “environmental law”**

- (1) In this Part “environmental law” means any legislative provision to the extent that it—
  - (a) is mainly concerned with environmental protection, and
  - (b) is not concerned with an excluded matter.
- (2) Excluded matters are—
  - (a) disclosure of or access to information;
  - (b) the armed forces or national security;
  - (c) taxation, spending or the allocation of resources within government.
- (3) The reference in subsection (1) to “legislative provision” does not include devolved legislative provision, except for the purposes of section 20.
- (4) “Devolved legislative provision” means—
  - (a) legislative provision contained in, or in an instrument made under, an Act of the Scottish Parliament, an Act or Measure of Senedd Cymru, or Northern Ireland legislation, and
  - (b) legislative provision not within paragraph (a) which—
    - (i) if contained in an Act of the Scottish Parliament, would be within the legislative competence of the Parliament;
    - (ii) if contained in an Act of Senedd Cymru, would be within the legislative competence of the Senedd, or
    - (iii) if contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Assembly and would not require the Secretary of State’s consent.
- (5) The Secretary of State may by regulations provide that a legislative provision specified in the regulations is, or is not, within the definition of “environmental law” in subsection (1) (and this Part applies accordingly).
- (6) Before making regulations under subsection (5) the Secretary of State must consult—
  - (a) the OEP, and
  - (b) any other persons the Secretary of State considers appropriate.
- (7) Regulations under subsection (5) are subject to the affirmative procedure.

#### **47 Interpretation of Part 1: general**

In this Part—

“application for judicial review” is to be read in accordance with section 39(8);

“current environmental improvement plan” has the meaning given by section 8(8);

“decision notice” means a notice given under section 36;

“devolved environmental governance body” means a person on whom a devolved environmental governance function has been conferred;

“devolved environmental governance function” means a devolved function that is similar to a function conferred on the OEP under this Part;

“devolved function” means—

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- (a) 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);
- (b) 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);
- (c) a function exercisable in or as regards Northern Ireland that could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998);

“devolved legislature” means the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly;

“environmental improvement plan” has the meaning given by section 8 (and see also section 10(10));

“environmental principles” has the meaning given by section 17;

“environmental review” has the meaning given by section 38;

“first environmental improvement plan” has the meaning given by section 8(8);

“improving the natural environment”, in relation to an environmental improvement plan, is to be read in accordance with section 8(5);

“information notice” means a notice given under section 35;

“judicial review” means—

- (a) in England and Wales or Northern Ireland, an application to the High Court for judicial review, or
- (b) in Scotland, an application to the supervisory jurisdiction of the Court of Session;

“making” policy includes developing, adopting or revising policy;

“met”, in relation to a target set under sections 1 to 3, has the meaning given by section 4(7);

“Minister of the Crown” has the same meaning as in the Ministers of the Crown Act 1975;

“OEP” has the meaning given by section 22;

“parliamentary function” means a function in connection with proceedings in Parliament or a devolved legislature;

“policy” includes proposals for legislation, but does not include an administrative decision taken in relation to a particular person or case (for example, a decision on an application for planning permission, funding or a licence, or a decision about regulatory enforcement);

“policy statement on environmental principles” has the meaning given by section 17;

“public authority” has the meaning given by section 31(3);

“relevant Minister” has the meaning given by section 33;

“relevant ombudsman” has the meaning given by section 23;

“specified date” and “specified standard”, in relation to a target set under sections 1 to 3, have the meaning given by section 1(8);

“statutory review” has the meaning given by section 39(8).

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## PART 2

### ENVIRONMENTAL GOVERNANCE: NORTHERN IRELAND

#### 48 **Improving the natural environment: Northern Ireland**

Schedule 2 makes provision about—

- (a) environmental improvement plans, and
- (b) policy statements on environmental principles, in Northern Ireland.

#### 49 **The Office for Environmental Protection: Northern Ireland**

Schedule 3—

- (a) makes provision about the functions of the OEP in, or as regards, Northern Ireland, and
- (b) amends this Act to reflect those functions.

## PART 3

### WASTE AND RESOURCE EFFICIENCY

#### *Producer responsibility*

#### 50 **Producer responsibility obligations**

(1) In Schedule 4—

- (a) Part 1 confers power on the relevant national authority to make regulations about producer responsibility obligations;
- (b) Part 2 confers power on the relevant national authority to make regulations about the enforcement of regulations made under Part 1.

(2) In this section and that Schedule “relevant national authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers or the Secretary of State;
- (c) in relation to Scotland, the Scottish Ministers or the Secretary of State;
- (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland or the Secretary of State.

(3) Regulations under Schedule 4 made by the Secretary of State may not contain provision that could be contained in regulations under that Schedule made by another relevant national authority, unless that authority consents.

(4) Regulations under Schedule 4 that contain only provision for, or in connection with, the variation of targets specified in the regulations are subject to the negative procedure.

(5) Otherwise, regulations under Schedule 4 are subject to the affirmative procedure.

(6) The following are repealed—

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- (a) in the Environment Act 1995, sections 93 to 95;
- (b) the Producer Responsibility Obligations (Northern Ireland) Order 1998 (S.I. 1998/1762 (N.I. 16)).

## **51 Producer responsibility for disposal costs**

- (1) Schedule 5 confers power on the relevant national authority to make regulations requiring the payment of sums in respect of the costs of disposing of products and materials.
- (2) In this section and that Schedule “relevant national authority” means—
  - (a) in relation to England, the Secretary of State;
  - (b) in relation to Wales, the Welsh Ministers or the Secretary of State;
  - (c) in relation to Scotland, the Scottish Ministers or the Secretary of State;
  - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland or the Secretary of State.
- (3) Regulations under Schedule 5 made by the Secretary of State may not contain provision that could be contained in regulations under that Schedule made by another relevant national authority, unless that authority consents.
- (4) Regulations under Schedule 5 are subject to the affirmative procedure.

### *Resource efficiency*

## **52 Resource efficiency information**

- (1) In Schedule 6—
  - (a) Part 1 confers power on the relevant national authority to make regulations about the provision of resource efficiency information;
  - (b) Part 2 confers power on the relevant national authority to make regulations about the enforcement of regulations made under Part 1.
- (2) In this section and that Schedule “relevant national authority” means—
  - (a) in relation to England, the Secretary of State;
  - (b) in relation to Wales, the Welsh Ministers or the Secretary of State;
  - (c) in relation to Scotland, the Scottish Ministers or the Secretary of State;
  - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland or the Secretary of State.
- (3) Regulations under Schedule 6—
  - (a) made by the Welsh Ministers, may contain only provision which, if contained in an Act of Senedd Cymru, would be within the legislative competence of the Senedd;
  - (b) made by the Scottish Ministers, may contain only provision which, if contained in an Act of the Scottish Parliament, would be within the legislative competence of the Parliament;
  - (c) made by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, may contain only provision which, if contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Assembly and would not require the Secretary of State’s consent.

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- (4) Regulations under Schedule 6 made by the Secretary of State may not contain provision that could be contained in regulations under that Schedule made by another relevant national authority, unless that authority consents.
- (5) Regulations under Schedule 6 are subject to the affirmative procedure.

### **53 Resource efficiency requirements**

- (1) In Schedule 7—
  - (a) Part 1 confers power on the relevant national authority to make regulations about resource efficiency requirements;
  - (b) Part 2 confers power on the relevant national authority to make regulations about the enforcement of regulations made under Part 1.
- (2) In this section and that Schedule “relevant national authority” means—
  - (a) in relation to England, the Secretary of State;
  - (b) in relation to Wales, the Welsh Ministers or the Secretary of State;
  - (c) in relation to Scotland, the Scottish Ministers or the Secretary of State;
  - (d) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland or the Secretary of State.
- (3) Regulations under Schedule 7—
  - (a) made by the Welsh Ministers, may contain only provision which, if contained in an Act of Senedd Cymru, would be within the legislative competence of the Senedd;
  - (b) made by the Scottish Ministers, may contain only provision which, if contained in an Act of the Scottish Parliament, would be within the legislative competence of the Parliament;
  - (c) made by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, may contain only provision which, if contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Assembly and would not require the Secretary of State’s consent.
- (4) Regulations under Schedule 7 made by the Secretary of State may not contain provision that could be contained in regulations under that Schedule made by another relevant national authority, unless that authority consents.
- (5) Regulations under Schedule 7 are subject to the affirmative procedure.

### **54 Deposit schemes**

- (1) Schedule 8 confers power on the relevant national authority to make regulations establishing deposit schemes.
- (2) In this section and that Schedule “the relevant national authority” means—
  - (a) in relation to a deposit scheme relating to the purchase of products in England, the Secretary of State;
  - (b) in relation to a deposit scheme relating to the purchase of products in Wales, the Welsh Ministers or the Secretary of State;
  - (c) in relation to a deposit scheme relating to the purchase of products in Northern Ireland, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland or the Secretary of State.



- (3) Regulations under Schedule 8—
- (a) made by the Welsh Ministers, may contain only provision which, if contained in an Act of Senedd Cymru, would be within the legislative competence of the Senedd;
  - (b) made by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, may contain only provision which, if contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Assembly and would not require the Secretary of State’s consent.
- (4) Regulations under Schedule 8 made by the Secretary of State may not contain provision that could be contained in regulations under that Schedule made by another relevant national authority, unless that authority consents.
- (5) Regulations made by a relevant national authority under Schedule 8 are subject to the affirmative procedure if they—
- (a) are the first regulations under paragraph 1, or the first regulations under paragraph 5, made by the authority;
  - (b) provide for conduct to be a criminal offence which is not a criminal offence under existing regulations made by the authority under that Schedule;
  - (c) provide for conduct to be subject to a civil sanction (within the meaning given by paragraph 5(3) of that Schedule) which is not subject to a civil sanction under existing regulations made by the authority under that Schedule;
  - (d) increase the amount or maximum amount of a fine or monetary penalty, or change the basis on which such an amount or maximum is to be determined.
- (6) Otherwise, regulations under Schedule 8 are subject to the negative procedure.
- (7) In this section “deposit scheme” has the meaning it has in Schedule 8.

## **55 Charges for single use items**

- (1) Schedule 9 confers powers on the relevant national authority to make regulations about charges for single use items.
- (2) In this section and that Schedule the “relevant national authority” means—
- (a) in relation to England, the Secretary of State;
  - (b) in relation to Wales, the Welsh Ministers;
  - (c) in relation to Northern Ireland, the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.
- (3) Regulations made by a relevant national authority under Schedule 9 are subject to the affirmative procedure if they—
- (a) are the first regulations made by the authority under that Schedule;
  - (b) contain provision about charging for a new item;
  - (c) provide for conduct to be subject to a civil sanction (within the meaning of paragraph 9(3) of that Schedule) which is not subject to a civil sanction under existing regulations made by the authority under that Schedule;
  - (d) increase the amount or maximum amount of a monetary penalty, or change the basis on which such an amount or maximum is to be determined.
- (4) Otherwise, regulations under Schedule 9 are subject to the negative procedure.

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- (5) A “new item” means an item in relation to which there are no existing regulations made by the relevant national authority under Schedule 9.

## 56 Charges for carrier bags

In Schedule 6 to the Climate Change Act 2008 (power to impose carrier bag charge) after paragraph 6 insert—

### *“Registration*

- 6A (1) This paragraph applies to regulations made by—
- (a) the Secretary of State, or
  - (b) the Department of Agriculture, Environment and Rural Affairs in Northern Ireland.
- (2) The regulations may require sellers to register with an administrator.
- (3) The regulations may make provision—
- (a) about applications for registration,
  - (b) about the period for which registration has effect,
  - (c) about the cancellation of registration.
- (4) The regulations may require sellers to pay to the administrator, in connection with their registration, fees of an amount determined by, or by the administrator in accordance with, the regulations.
- (5) The regulations may provide for the amount of the fees to be such as to recover the costs incurred by the administrator in performing its functions under the regulations.”

### *Managing waste*

## 57 Separation of waste

- (1) The Environmental Protection Act 1990 is amended as follows.
- (2) In section 30 (definitions of authorities), after subsection (4) insert—
- “(4A) In this Part—
- “English waste collection authority” means a waste collection authority whose area is in England;
- “English waste disposal authority” means a waste disposal authority whose area is in England.”
- (3) In section 33ZA (fixed penalty notices), in subsection (12) omit the definition of “English waste collection authority”.
- (4) For section 45A substitute—

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**“45A England: separate collection of household waste**

- (1) This section applies in relation to arrangements made under section 45(1)(a) for an English waste collection authority to collect household waste, unless they are arrangements in relation to which section 45AZA applies.
- (2) The arrangements must meet the conditions in subsections (3) to (8) (subject to any provision in regulations under section 45AZC).
- (3) The first condition is that recyclable household waste must be collected separately from other household waste.
- (4) The second condition is that recyclable household waste must be collected for recycling or composting.
- (5) The third condition is that recyclable household waste in each recyclable waste stream must be collected separately, except so far as provided by subsection (6).
- (6) Recyclable household waste in two or more recyclable waste streams may be collected together where—
  - (a) it is not technically or economically practicable to collect recyclable household waste in those recyclable waste streams separately, or
  - (b) collecting recyclable household waste in those recyclable waste streams separately has no significant environmental benefit (having regard to the overall environmental impact of collecting it separately and of collecting it together).
- (7) But recyclable household waste within subsection (10)(a) to (d) may not be collected together with recyclable household waste within subsection (10)(e) or (f).
- (8) The fourth condition is that recyclable household waste which is food waste must be collected at least once a week.
- (9) Household waste is “recyclable household waste” if—
  - (a) it is within any of the recyclable waste streams, and
  - (b) it is of a description specified in regulations made by the Secretary of State.
- (10) For the purposes of this section the recyclable waste streams are—
  - (a) glass;
  - (b) metal;
  - (c) plastic;
  - (d) paper and card;
  - (e) food waste;
  - (f) garden waste.

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**45AZA England: separate collection of household waste from relevant non-domestic premises**

- (1) This section applies in relation to arrangements for household waste to be collected from relevant non-domestic premises in England by a person who, in collecting the waste—
  - (a) is acting in the course of a business (whether or not for profit), or
  - (b) is exercising a public function (including a function under section 45(1)(a)).
- (2) The arrangements must meet the conditions in subsections (3) to (7) (subject to any provision in regulations under section 45AZC).
- (3) The first condition is that recyclable household waste must be collected separately from other household waste.
- (4) The second condition is that recyclable household waste must be collected for recycling or composting.
- (5) The third condition is that recyclable household waste in each recyclable waste stream must be collected separately, except so far as provided by subsection (6).
- (6) Recyclable household waste in two or more recyclable waste streams may be collected together where—
  - (a) it is not technically or economically practicable to collect recyclable household waste in those recyclable waste streams separately, or
  - (b) collecting recyclable household waste in those recyclable waste streams separately has no significant environmental benefit (having regard to the overall environmental impact of collecting it separately and of collecting it together).
- (7) But recyclable household waste within subsection (10)(a) to (d) may not be collected together with recyclable household waste within subsection (10)(e).
- (8) The person who presents household waste from the premises for collection under the arrangements must present it separated in accordance with the arrangements.

This subsection does not apply so far as the person is subject to an equivalent duty by virtue of a notice under section 46.
- (9) Household waste is “recyclable household waste” if—
  - (a) it is within any of the recyclable waste streams, and
  - (b) it is of a description specified in regulations made by the Secretary of State.
- (10) For the purposes of this section the “recyclable waste streams” are—
  - (a) glass;
  - (b) metal;
  - (c) plastic;
  - (d) paper and card;
  - (e) food waste.

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- (11) For the purposes of this section “relevant non-domestic premises” means—
- (a) a residential home;
  - (b) premises forming part of a university or school or other educational establishment;
  - (c) premises forming part of a hospital or nursing home;
  - (d) premises of a description specified in regulations made by the Secretary of State.
- (12) Regulations under subsection (11)(d) may not specify domestic properties (within the meaning of section 75(5)(a)).

#### **45AZB England: separate collection of industrial or commercial waste**

- (1) This section applies in relation to arrangements for industrial or commercial waste to be collected from premises in England by a person who, in collecting the waste—
- (a) is acting in the course of a business (whether or not for profit), or
  - (b) is exercising a public function (including a function under section 45(1)(b) or (2)).
- (2) So far as they relate to waste which is similar in nature and composition to household waste (“relevant waste”) the arrangements must meet the conditions in subsections (3) to (7).
- This is subject to any provision in regulations under section 45AZC.
- (3) The first condition is that recyclable relevant waste must be collected separately from other relevant waste.
- (4) The second condition is that recyclable relevant waste must be collected for recycling or composting.
- (5) The third condition is that recyclable relevant waste in each recyclable waste stream must be collected separately, except so far as provided by subsection (6).
- (6) Recyclable relevant waste in two or more recyclable waste streams may be collected together where—
- (a) it is not technically or economically practicable to collect recyclable relevant waste in those recyclable waste streams separately, or
  - (b) collecting recyclable relevant waste in those recyclable waste streams separately has no significant environmental benefit (having regard to the overall environmental impact of collecting it separately and of collecting it together).
- (7) But recyclable relevant waste within subsection (10)(a) to (d) may not be collected together with recyclable relevant waste within subsection (10)(e).
- (8) The person who presents relevant waste from the premises for collection under the arrangements must present it separated in accordance with the arrangements.

This subsection does not apply so far as the person is subject to an equivalent duty by virtue of a notice under section 47.

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- (9) Relevant waste is “recyclable relevant waste” if—
- (a) it is within any of the recyclable waste streams, and
  - (b) it is of a description specified in regulations made by the Secretary of State.
- (10) For the purposes of this section the “recyclable waste streams” are—
- (a) glass;
  - (b) metal;
  - (c) plastic;
  - (d) paper and card;
  - (e) food waste.

**45AZC Sections 45A to 45AZB: powers to exempt and extend**

- (1) The Secretary of State may by regulations provide—
- (a) for exemptions from the condition in section 45A(5), 45AZA(5) or 45AZB(5);
  - (b) for exemptions from the application of section 45AZA or 45AZB;
  - (c) for exemptions from the application of section 45AZA or 45AZB in relation to household waste or relevant waste in recyclable waste streams specified in the regulations.
- (2) The Secretary of State may exercise the power in subsection (1)(a) in relation to two or more recyclable waste streams only if satisfied that doing so will not significantly reduce the potential for recyclable household waste or recyclable relevant waste in those waste streams to be recycled or composted.
- (3) The Secretary of State may by regulations amend sections 45A to 45AZB so as to—
- (a) add further recyclable waste streams, and
  - (b) make provision about the extent to which recyclable household waste or recyclable relevant waste in any of those waste streams may or may not be collected together with recyclable household waste or recyclable relevant waste in another recyclable waste stream.
- (4) The Secretary of State may exercise the power in subsection (3)(a) in relation to a waste stream only if satisfied that—
- (a) there is waste in that waste stream which is suitable for recycling or composting, and recycling or composting it will have an environmental benefit,
  - (b) all English waste collection authorities can make arrangements for collecting waste in that waste stream which comply with the conditions in section 45A, 45AZA or 45AZB (as appropriate), taking account of any amendments to be made under subsection (3)(b), and
  - (c) there is a market for it after its collection.
- (5) Before making regulations under this section the Secretary of State must consult—
- (a) the Environment Agency,
  - (b) English waste collection authorities,
  - (c) English waste disposal authorities, and

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- (d) anyone else the Secretary of State considers appropriate.
- (6) The requirement in subsection (5) may be met by consultation carried out before this section comes into force.

#### **45AZD Sections 45A to 45AZB: duties of waste collectors**

- (1) Subsection (2) applies where—
  - (a) a person collects or proposes to collect waste under arrangements to which section 45A, 45AZA or 45AZB applies, and
  - (b) the arrangements include arrangements to collect recyclable household waste or recyclable relevant waste in two or more recyclable waste streams together in reliance on section 45A(6), 45AZA(6) or 45AZB(6).
- (2) The person must prepare a written assessment of why the person considers that the section relied on applies.

#### **45AZE Sections 45 to 45AZD: guidance**

- (1) The Secretary of State may issue guidance about the duties imposed by sections 45 to 45AZD.
- (2) The guidance may in particular deal with—
  - (a) the circumstances in which it may not be technically or economically practicable to collect recyclable household waste or recyclable relevant waste in recyclable waste streams separately, or in which separate collection may not have significant environmental benefit;
  - (b) the frequency with which household waste other than recyclable household waste which is food waste should be collected;
  - (c) the kinds of waste which are relevant waste for the purposes of section 45AZB;
  - (d) assessments under section 45AZD.
- (3) The guidance may make different provision in relation to sections 45A, 45AZA and 45AZB.
- (4) Before issuing guidance under this section the Secretary of State must consult—
  - (a) the Environment Agency,
  - (b) English waste collection authorities,
  - (c) English waste disposal authorities, and
  - (d) anyone else the Secretary of State considers appropriate.
- (5) The requirement in subsection (4) may be met by consultation carried out before this section comes into force.
- (6) A waste collection authority, and any party to arrangements to which section 45AZA or 45AZB applies, must have regard to the guidance
- (7) The Secretary of State must lay before Parliament, and publish, the guidance.

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### **45AZF Sections 45AZA and 45AZB: compliance notices**

- (1) This section applies where the Environment Agency considers that a person other than an English waste collection authority—
  - (a) is a party to arrangements for the collection of household waste which fail to comply with section 45AZA,
  - (b) is a party to arrangements for the collection of relevant waste which fail to comply with section 45AZB, or
  - (c) is failing to comply with section 45AZA(8) or 45AZB(8).
- (2) It may give that person a notice (a “compliance notice”) requiring them to take specified steps within a specified period to secure that the failure does not continue or recur.
- (3) A compliance notice must—
  - (a) specify the failures to comply with section 45AZA or 45AZB,
  - (b) specify the steps which must be taken for the purpose of preventing the failure continuing or recurring,
  - (c) specify the period within which those steps must be taken, and
  - (d) give information as to the rights of appeal (including the period within which an appeal must be brought).
- (4) A person who fails to comply with a compliance notice commits an offence.
- (5) A person who commits an offence under subsection (4) is liable on summary conviction or conviction on indictment to a fine.

### **45AZG Sections 45AZA and 45AZB: appeals against compliance notices**

- (1) A person who is given a compliance notice may appeal to the First-tier Tribunal against—
  - (a) the notice, or
  - (b) any requirement in the notice.
- (2) The notice or requirement has effect pending the determination of the appeal, unless the tribunal decides otherwise.
- (3) The tribunal may—
  - (a) quash the notice or requirement,
  - (b) confirm the notice or requirement,
  - (c) vary the notice or requirement,
  - (d) take any steps the Environment Agency could take in relation to the failure giving rise to the notice or requirement, or
  - (e) remit any matter relating to the notice or requirement to the Environment Agency.”
- (5) In section 46(2) (receptacles for household waste) for the words from “subject to” to the end substitute—
  - “(a) subject to that, a waste collection authority whose area is in Wales may require separate receptacles or compartments of receptacles to be used for waste which is to be recycled and waste which is not;



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- (b) an English waste collection authority may require separate receptacles or compartments of receptacles to be used for the purposes of complying with its duties under section 45A or 45AZA.”
- (6) In section 47(3) (receptacles for commercial or industrial waste) at the end insert “, but an English waste collection authority may require separate receptacles or compartments of receptacles to be used for the purposes of complying with section 45AZB so far as it applies to waste of the kind in question.”
- (7) In section 160A(2) (regulations and orders) (as inserted by section 63), in the Table, at the appropriate place insert—
- “45AZC (separation of waste) | any regulations under that section.”
- (8) In section 41(1) of the Environment Act 1995 (powers to make charging schemes) after paragraph (r) (as inserted by section 64) insert—
- “(s) as a means of recovering costs which are incurred by it in performing functions relating to sections 45A to 45AZB of the Environmental Protection Act 1990, the Agency may require the payment to it of such charges as may from time to time be prescribed;”.
- (9) In section 108(15) of the Environment Act 1995 (powers of entry), in the definition of “pollution control functions” in relation to a waste collection authority, in paragraph (a) for “, 45A” substitute “to 45AZD”.

## 58 Electronic waste tracking: Great Britain

- (1) The Environmental Protection Act 1990 is amended in accordance with subsections (2) and (3).
- (2) After section 34C insert—

### *“Electronic waste tracking*

#### **34CA Electronic waste tracking**

- (1) The relevant national authority may by regulations make provision for the purpose of tracking relevant waste, including provision about the establishment of an electronic system (“the system”) for that purpose.
- (2) The regulations may impose requirements on relevant waste controllers, or a waste regulation authority, to take specified steps to secure the entry into the system of specified information about, or which is relevant to the tracking or regulation of, specified relevant waste.
- (3) The information which may be specified includes information about—
- the processing, movement or transfer to another person of relevant waste or waste processing products;
  - persons to whom relevant waste or waste processing products have been transferred;
  - the carrying out of any activity by relevant waste controllers in relation to, or in connection with, relevant waste or waste processing products;

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- (d) relevant waste controllers.
- (4) The regulations may impose requirements on relevant waste controllers to take specified steps to enable physical identification of specified relevant waste or waste processing products.
- (5) The regulations may allow relevant waste controllers, or a waste regulation authority, to make arrangements for other persons to discharge their obligations under the regulations, and may impose requirements on such persons in connection with such arrangements.
- (6) The regulations must provide for an exemption for digitally excluded persons from any requirement that would involve the use of electronic communications or the keeping of electronic records, but may impose alternative requirements on those persons that do not involve either.
- (7) The regulations may designate a person to establish, operate or maintain the system and may confer functions on such a person.
- (8) The regulations may make provision about how information held on the system is to be used including provision—
- (a) about who may access the information;
  - (b) permitting, or requiring, the disclosure, publication or transfer to another electronic system of such information;
  - (c) imposing requirements on persons who obtain such information not to further disclose it.
- (9) The regulations may impose fees or charges, payable to a person designated by, or in accordance with, the regulations, on persons subject to any requirement imposed by the regulations.
- (10) The amount of such fees or charges may reflect the costs of establishing, operating or maintaining the system and any other costs incurred in connection with the tracking of relevant waste by a person designated to establish, operate or maintain the system.
- (11) The relevant national authority may provide grants or loans to a person designated to establish, operate or maintain the system.
- (12) In this section—
- “digitally excluded person” means a person—
    - (a) who is a practising member of a religious society or order whose beliefs are incompatible with using electronic communications or keeping electronic records, or
    - (b) for whom it is not reasonably practicable to use electronic communications or to keep electronic records for any reason (including age, disability or location);
  - “extractive waste”—
    - (a) in relation to regulations made in relation to England or Wales, has the meaning it has in this Part (as it extends to England and Wales);
    - (b) in relation to regulations made in relation to Scotland, has the meaning it has in the Management of Extractive Waste (Scotland) Regulations 2010 ([S.S.I. 2010/60](#));

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“relevant national authority” means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the Welsh Ministers;
- (c) in relation to Scotland, the Scottish Ministers;

“relevant waste” means controlled waste or extractive waste;

“relevant waste controller” means any person who—

- (a) is subject to the duty in section 34(1) (duty of care as respects controlled waste),
- (b) imports, produces, carries, keeps, treats, manages or disposes of extractive waste or, as a dealer or broker, has control of such waste, or
- (c) exports relevant waste;

“specified” means specified or described in the regulations;

“waste processing product” means any product of the processing of relevant waste, including material which is not relevant waste or which is not derived from relevant waste.

### **34CB Further provision about regulations under section 34CA**

- (1) Regulations under section 34CA(1) may make provision about the enforcement of requirements imposed by or under the regulations.
- (2) The regulations may include provision—
  - (a) creating criminal offences punishable with a fine in respect of failures to comply with the regulations;
  - (b) about such offences.
- (3) The regulations may include provision—
  - (a) for, about or connected with the imposition of civil sanctions by an enforcement authority;
  - (b) in the case of a civil sanction that requires the payment of an amount, for that amount—
    - (i) to be specified in the regulations;
    - (ii) to be determined by an enforcement authority in accordance with the regulations;
  - (c) for such a determination to be made by reference to factors specified or described in the regulations which may include, for example, the turnover of a business or the costs of complying with the requirement being enforced (and the regulations may provide that the amount to be paid may exceed the amount of those costs);
  - (d) about appeals against the imposition of a civil sanction.
- (4) In this section “civil sanction” means a sanction of a kind for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings).
- (5) The regulations may include provision for the imposition of sanctions of that kind whether or not—
  - (a) the conduct in respect of which the sanction is imposed constitutes an offence,

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- (b) the enforcement authority is a regulator for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008, or
- (c) the relevant national authority may make provision for the imposition of sanctions under that Part.

- (6) The regulations may make different provision for different purposes.
- (7) The regulations may make consequential, supplementary, incidental, transitional or saving provision, including provision amending, repealing or revoking primary legislation or retained direct EU legislation.
- (8) In this section—

“enforcement authority” means the Environment Agency, the Natural Resources Body for Wales, a waste collection authority for an area in England or Wales or the Scottish Environment Protection Agency;

“primary legislation” means—

- (a) in relation to regulations made by the Secretary of State, an Act of Parliament;
- (b) in relation to regulations made by the Welsh Ministers, an Act of Parliament or an Act or Measure of Senedd Cymru;
- (c) in relation to regulations made by the Scottish Ministers, an Act of Parliament or an Act of the Scottish Parliament.”

- (3) In section 160A(2) (regulations and orders) (as inserted by section 63), in the Table, at the appropriate place insert—

“34CA (electronic waste tracking)

regulations that—

- (a) are the first set of regulations to be made by the relevant national authority (within the meaning given by section 34CA(12)) under section 34CA,
- (b) provide for conduct to be a criminal offence which is not a criminal offence under existing regulations made by that authority under that section,
- (c) increase the maximum penalty for a criminal offence under existing regulations made by that authority under that section,
- (d) provide for conduct to be subject to a civil sanction (within the meaning given by section 34CB(4)) which is not subject to a civil sanction under existing regulations made by that authority under that section, or
- (e) amend, repeal or revoke a provision contained in primary legislation (within the meaning given by section 34CB(8)) or retained direct principal EU legislation.”

- (4) In section 41(1) of the Environment Act 1995 (powers to make charging schemes) after paragraph (d) insert—

“(da) as a means of recovering costs incurred by it in performing functions conferred by regulations made under section 34CA of the

Environmental Protection Act 1990 (electronic waste tracking) the Agency, the Natural Resources Body for Wales or SEPA may require the payment to it of such charges as may from time to time be prescribed;”.

## **59 Electronic waste tracking: Northern Ireland**

- (1) The Waste and Contaminated Land (Northern Ireland) Order 1997 (S.I. 1997/2778 (N.I. 19)) is amended as follows.
- (2) After Article 5F insert—

*“Electronic waste tracking*

### **5G Electronic waste tracking**

- (1) The Department may by regulations make provision for the purpose of tracking relevant waste, including provision about the establishment of an electronic system (“the system”) for that purpose.
- (2) The regulations may impose requirements on relevant waste controllers, or the Department, to take specified steps to secure the entry into the system of specified information about, or which is relevant to the tracking or regulation of, specified relevant waste.
- (3) The information which may be specified includes information about—
  - (a) the processing, movement or transfer to another person of relevant waste or waste processing products;
  - (b) persons to whom relevant waste or waste processing products have been transferred;
  - (c) the carrying out of any activity by relevant waste controllers in relation to, or in connection with, relevant waste or waste processing products;
  - (d) relevant waste controllers.
- (4) The regulations may impose requirements on relevant waste controllers to take specified steps to enable physical identification of specified relevant waste or waste processing products.
- (5) The regulations may allow relevant waste controllers, or the Department, to make arrangements for other persons to discharge their obligations under the regulations, and may impose requirements on such persons in connection with such arrangements.
- (6) The regulations must provide for an exemption for digitally excluded persons from any requirement that would involve the use of electronic communications or the keeping of electronic records, but may impose alternative requirements on those persons that do not involve either.
- (7) The regulations may designate a person to establish, operate or maintain the system and may confer functions on such a person.
- (8) The regulations may make provision about how information held on the system is to be used including provision—

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- (a) about who may access the information;
  - (b) permitting, or requiring, the disclosure, publication or transfer to another electronic system of such information;
  - (c) imposing requirements on persons who obtain such information not to further disclose it.
- (9) The regulations may impose fees or charges, payable to a person designated by, or in accordance with, the regulations, on persons subject to any requirement imposed by the regulations.
- (10) The amount of such fees or charges may reflect the costs of establishing, operating or maintaining the system and any other costs incurred in connection with the tracking of relevant waste by a person designated to establish, operate or maintain the system.
- (11) The Department may provide grants or loans to a person designated to establish, operate or maintain the system.
- (12) In this Article—
- “digitally excluded person” means a person—
    - (a) who is a practising member of a religious society or order whose beliefs are incompatible with using electronic communications or keeping electronic records, or
    - (b) for whom it is not reasonably practicable to use electronic communications or to keep electronic records for any reason (including age, disability or location);
  - “extractive waste” has the meaning it has in the Planning (Management of Waste from Extractive Industries) Regulations (Northern Ireland) 2015 ([S.R. 2015 No. 85](#));
  - “relevant waste” means controlled waste or extractive waste;
  - “relevant waste controller” means any person who—
    - (a) is subject to the duty in Article 5(1) (duty of care as respects controlled waste),
    - (b) imports, produces, carries, keeps, treats, manages or disposes of extractive waste or, as a dealer or broker, has control of such waste, or
    - (c) exports relevant waste;
  - “specified” means specified or described in the regulations;
  - “waste processing product” means any product of the processing of relevant waste, including material which is not relevant waste or which is not derived from relevant waste.

#### 5H Further provision about regulations under Article 5G

- (1) Regulations under Article 5G may make provision about the enforcement of requirements imposed by or under the regulations.
- (2) The regulations may include provision—
  - (a) creating criminal offences punishable with a fine in respect of failures to comply with the regulations;
  - (b) about such offences.

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- (3) The regulations may include provision—
- (a) for, about or connected with the imposition of civil sanctions by the Department;
  - (b) in the case of a civil sanction that requires the payment of an amount, for that amount—
    - (i) to be specified in the regulations;
    - (ii) to be determined by the Department in accordance with the regulations;
  - (c) for such a determination to be made by reference to factors specified or described in the regulations which may include, for example, the turnover of a business or the costs of complying with the requirement being enforced (and the regulations may provide that the amount to be paid may exceed the amount of those costs);
  - (d) about appeals against the imposition of a civil sanction.
- (4) In this Article “civil sanction” means a sanction of a kind for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings).
- (5) The regulations may include provision for the imposition of sanctions of that kind whether or not the conduct in respect of which the sanction is imposed constitutes an offence.
- (6) The regulations may make consequential, supplementary, incidental, transitional or saving provision, including provision amending, repealing or revoking any statutory provision.”
- (3) In Article 82 (regulations etc) after paragraph (1A) insert—
- “(1B) Paragraph (1) does not apply to regulations made by the Department under Article 5G that—
- (a) are the first set of regulations made under that Article,
  - (b) provide for conduct to be a criminal offence which is not a criminal offence under existing regulations under that Article,
  - (c) increase the maximum penalty for a criminal offence under existing regulations under that Article,
  - (d) provide for conduct to be subject to a civil sanction (within the meaning given by Article 5H(4)) which is not subject to a civil sanction under existing regulations under that Article,
  - (e) amend or repeal a provision contained in Northern Ireland legislation or an Act of Parliament, or
  - (f) amend or revoke a provision contained in retained direct principal EU legislation.
- (1C) Regulations to which paragraph (1) does not apply by virtue of paragraph (1B) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.”



## 60 Hazardous waste: England and Wales

- (1) The Environmental Protection Act 1990 is amended in accordance with subsections (2) to (4).
- (2) After section 62 insert—

### **“62ZA Special provision with respect to hazardous waste in England and Wales**

- (1) The relevant national authority may, by regulations, make provision for, about or connected with the regulation of hazardous waste in England and Wales.
- (2) Provision that may be made in the regulations includes provision—
  - (a) prohibiting or restricting any activity in relation to hazardous waste;
  - (b) for the giving of directions by waste regulation authorities with respect to matters connected with any activity in relation to hazardous waste;
  - (c) imposing requirements about how hazardous waste may be kept (including requirements about the quantities of hazardous waste which may be kept at any place);
  - (d) about hazardous waste that originated outside England or Wales;
  - (e) about the registration of hazardous waste controllers or places where activities in relation to hazardous waste are carried out;
  - (f) for the keeping of records by hazardous waste controllers;
  - (g) for the inspection of those records by waste regulation authorities or specified persons;
  - (h) for the provision by hazardous waste controllers of copies of, or information derived from, those records to waste regulation authorities or specified persons;
  - (i) for hazardous waste controllers to inform waste regulation authorities, or specified persons, when carrying out activities in relation to hazardous waste;
  - (j) about the circumstances in which waste which is not hazardous waste, but which shares characteristics with hazardous waste, is to be treated as hazardous waste;
  - (k) for, about or connected with criminal offences;
  - (l) for, about or connected with the imposition of civil sanctions.
- (3) The regulations may not provide for an offence to be punishable—
  - (a) on summary conviction, by imprisonment, or
  - (b) on conviction on indictment, by a term of imprisonment exceeding two years.
- (4) For the purposes of this section “civil sanction” means a sanction of a kind for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings).
- (5) The regulations may make provision for, about or connected with the imposition of a sanction of that kind whether or not—



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- (a) the conduct in respect of which the sanction is imposed constitutes an offence, or
  - (b) the person imposing it is a regulator for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008.
- (6) The regulations may also include provision—
- (a) for the supervision by waste regulation authorities—
    - (i) of activities in relation to hazardous waste, or
    - (ii) of hazardous waste controllers;
  - (b) about the keeping of records (which may include registers of hazardous waste controllers and places where hazardous waste may be kept or processed) by waste regulation authorities;
  - (c) as to the recovery of expenses or other charges for the treatment, keeping or disposal or the re-delivery of hazardous waste by waste regulation authorities or hazardous waste controllers;
  - (d) as to appeals to the relevant national authority from decisions of waste regulation authorities.
- (7) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).
- (8) Regulations under this section may confer functions (including functions involving the exercise of a discretion) on the relevant national authority or a waste regulation authority.
- (9) The regulations may—
- (a) make different provision for different purposes;
  - (b) make incidental, supplementary, consequential, transitional or saving provision.
- (10) For the purposes of this section “mixing” in relation to hazardous waste means—
- (a) diluting it (with any substance);
  - (b) mixing it with other hazardous waste of a different type, or that has different characteristics;
  - (c) mixing it with any other substance or material (whether waste or not).
- (11) In this section—
- “activity”, in relation to hazardous waste, includes—
- (a) keeping, collecting, receiving, importing, exporting, transporting or producing hazardous waste;
  - (b) sorting, treating, recovering, mixing or otherwise processing hazardous waste;
  - (c) disposing of hazardous waste in any manner (including providing hazardous waste to another person for the purposes of that person carrying out an activity in relation to it);
  - (d) examining, testing or classifying hazardous waste (including doing any of those things to waste in connection with establishing whether it is hazardous);
  - (e) acting as a broker of, or dealer in, hazardous waste;

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(f) directing or supervising another person in relation to an activity in relation to hazardous waste;

“hazardous waste controller” means a person who carries out any activity in relation to hazardous waste;

“relevant national authority” means—

(a) in relation to England, the Secretary of State;

(b) in relation to Wales, the Welsh Ministers;

“specified” means specified in the regulations.”

(3) In section 75 (meaning of “waste” etc) for subsection (8A) substitute—

“(8A) In the application of this Part to England, “hazardous waste” means—

(a) any waste identified as hazardous waste in—

(i) the waste list as it applies in relation to England, or

(ii) regulations made by the Secretary of State under regulation 3 of the Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1540), and

(b) any other waste that is treated as hazardous waste for the purposes of—

(i) regulations made by the Secretary of State under section 62ZA, or

(ii) the Hazardous Waste (England and Wales) Regulations 2005 (S.I. 2005/894).

(8B) In the application of this Part to Wales, “hazardous waste” means—

(a) any waste identified as hazardous waste in—

(i) the waste list as it applies in relation to Wales, or

(ii) regulations made by the Welsh Ministers under regulation 3 of the Waste and Environmental Permitting etc. (Legislative Functions and Amendment etc.) (EU Exit) Regulations 2020 (S.I. 2020/1540), and

(b) any other waste that is treated as hazardous waste for the purposes of—

(i) regulations made by the Welsh Ministers under section 62ZA, or

(ii) the Hazardous Waste (Wales) Regulations 2005 (S.I. 2005/1806 (W.138)).

(8C) In subsections (8A) and (8B) “the waste list” means the list of waste contained in the Annex to Commission Decision of 3 May 2000 replacing [Decision 94/3/EC](#) establishing a list of wastes pursuant to Article 1(a) of [Council Directive 75/442/EEC](#) on waste and [Council Decision 94/904/EC](#) establishing a list of hazardous waste pursuant to Article 1(4) of [Council Directive 91/689/EEC](#) on hazardous waste ([2000/532/EC](#)).”

(4) In section [160A\(2\)](#) (regulations and orders) (as inserted by section 63), in the Table, at the appropriate place insert—

“ <a href="#">62ZA</a> (regulation of hazardous waste in England and Wales)	regulations that—
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- (a) provide for conduct to be a criminal offence which is not a criminal offence under existing regulations made by the relevant national authority (within the meaning given by section 62ZA(11)) under section 62ZA,
- (b) increase the maximum penalty for a criminal offence under existing regulations made by that authority under that section, or
- (c) provide for conduct to be subject to a civil sanction (within the meaning given by section 62ZA(4)) which is not subject to a civil sanction under existing regulations made by that authority under that section.”

(5) In section 41(1) of the Environment Act 1995 (power to make charging schemes), before paragraph (d) insert—

“(cc) as a means of recovering costs incurred by it in performing functions conferred by regulations made under section 62ZA of the Environmental Protection Act 1990 (special provision with respect to hazardous waste), the Agency or the Natural Resources Body for Wales may require the payment to it of such charges as may from time to time be prescribed.”.

(6) In section 114 of the Environment Act 1995 (delegation or reference of appeals etc), in subsection (2)(a)(iii) before “, 78L” insert “62ZA(6)(d)”.

## 61 Hazardous waste: Northern Ireland

(1) The Waste and Contaminated Land (Northern Ireland) Order 1997 (S.I. 1997/2778 (N.I. 19)) is amended as follows.

(2) In Article 30 (special provision with respect to hazardous waste)—

(a) in paragraph (1), for the words from “regulations” to “disposal” substitute “the Department may, by regulations, make provision for, about or connected with the regulation”;

(b) in paragraph (2)—

(i) before sub-paragraph (a) insert—

“(za) prohibiting or restricting the treatment, keeping or disposal of hazardous waste or any other activity in relation to such waste”;

(ii) in sub-paragraph (a), after “hazardous waste” insert “or any other activity in relation to such waste”;

(iii) after sub-paragraph (g) insert—

“(h) for, about or connected with the imposition of civil sanctions.”;

(c) after that paragraph insert—

“(2A) For the purposes of this Article “civil sanction” means a sanction of a kind for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings).

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- (2B) The regulations may include provision for, about or connected with the imposition of a sanction of that kind whether or not—
  - (a) the conduct in respect of which the sanction is imposed constitutes an offence, or
  - (b) the person imposing it is a regulator for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008.”;
- (d) after paragraph (3) insert—
  - “(3A) The regulations may make consequential, supplementary, incidental, transitional or saving provision.”
- (3) In Article 82 (regulations etc) after paragraph (1C) (as inserted by section 59) insert—
  - “(1D) Paragraph (1) does not apply to regulations made by the Department under Article 30 that provide for conduct to be subject to a civil sanction (within the meaning given by Article 30(2A)) which is not subject to a civil sanction under existing regulations under that Article.
  - (1E) Regulations to which paragraph (1) does not apply by virtue of paragraph (1D) may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.”

## **62 Transfrontier shipments of waste**

- (1) Section 141 of the Environmental Protection Act 1990 (power to prohibit or restrict the importation or exportation of waste) is amended in accordance with subsections (2) to (8).
- (2) In the heading—
  - (a) for “prohibit or restrict” substitute “regulate”;
  - (b) after “waste” insert “or the transit of waste for export”.
- (3) For subsection (1) substitute—
  - “(1) The Secretary of State may, by regulations, make provision for, about or connected with the regulation of the importation or exportation of waste or the transit of waste for export.
  - (1A) Provision that may be made in regulations under this section includes provision prohibiting or restricting—
    - (a) the importation of waste;
    - (b) the landing and unloading of waste in the United Kingdom;
    - (c) the exportation of waste;
    - (d) the loading of waste for exportation;
    - (e) the transit of waste for export.
  - (1B) The provision that may be made by virtue of subsection (1A) includes provision which relates to—
    - (a) the intended final destination of waste, or
    - (b) the countries or territories it is intended to pass through before reaching that destination.”
- (4) For subsection (3) substitute—

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- “(3) Regulations under this section may confer functions on the Secretary of State or a waste regulation authority, including functions—
- (a) involving the exercise of a discretion;
  - (b) relating to enforcement.”

(5) Omit subsection (4).

(6) In subsection (5)—

- (a) omit paragraph (a);
- (b) after that paragraph insert—
  - “(aa) provide for the Secretary of State to issue general directions as to the exercise by waste regulation authorities of their functions in connection with the regulation of the importation or exportation of waste or the transit of waste for export;”;
- (c) in paragraph (b) omit “prescribed in or under the regulations”;
- (d) after paragraph (b) insert—
  - “(ba) provide for the charging by waste regulation authorities of fees or charges payable by persons involved in the importation or exportation of waste or the transit of waste for export;
  - (bb) provide that such fees or charges may be used by waste regulation authorities to meet costs incurred in exercising their functions in connection with the regulation of those activities;”;
- (e) in paragraph (d), for the words from “to” to the end substitute “, with or without modifications, to section 108(4) of the Environment Act 1995 (powers of entry and seizure) on persons authorised by the Secretary of State or a waste regulation authority;”;
- (f) in paragraph (e), for “authorities under the regulations” substitute “waste regulation authorities”;
- (g) after paragraph (f) insert—
  - “(fa) make provision authorising the disclosure of information by Officers of Revenue and Customs to waste regulation authorities;
  - (fb) confer, on persons designated as general customs officials under section 3(1) of the Borders, Citizenship and Immigration Act 2009, functions relating to the seizure and detention of waste that has arrived at, or entered into, the United Kingdom or is to leave the United Kingdom;”;
- (h) after paragraph (g) insert—
  - “(h) make provision for, about or connected with the imposition of civil sanctions.”

(7) After subsection (5A) insert—

- “(5B) For the purposes of this section “civil sanction” means a sanction of a kind for which provision may be made under Part 3 of the Regulatory Enforcement and Sanctions Act 2008 (fixed monetary penalties, discretionary requirements, stop notices and enforcement undertakings).

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*Status: This is the original version (as it was originally enacted).*

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- (5C) The regulations may make provision for, about or connected with the imposition of a sanction of that kind whether or not—
- (a) the conduct in respect of which the sanction is imposed constitutes an offence, or
  - (b) the person imposing it is a regulator for the purposes of Part 3 of the Regulatory Enforcement and Sanctions Act 2008.
- (5D) Regulations under this section may make provision in relation to any area of sea or seabed or its subsoil within the seaward limits of—
- (a) the area designated by Order in Council under section 1(7) of the Continental Shelf Act 1964 (designation of continental shelf), or
  - (b) the area designated by Order in Council under section 41(3) of the Marine and Coastal Access Act 2009 (designation of exclusive economic zone).
- (5E) Regulations under this section may make consequential, supplementary, incidental, transitional or saving provision, including provision amending, repealing or revoking primary legislation or retained direct EU legislation.”
- (8) In subsection (6), at the appropriate places insert—
- ““exportation”, in relation to waste, means causing it to leave the United Kingdom;”;
- ““importation”, in relation to waste, means causing it to arrive at, or enter into, the United Kingdom;”;
- ““primary legislation” means—
- (a) an Act of Parliament,
  - (b) a Measure or Act of Senedd Cymru,
  - (c) an Act of the Scottish Parliament, or
  - (d) Northern Ireland legislation;”;
- ““transit of waste for export” means the transportation or keeping of waste, that has arrived at, or has entered, the United Kingdom, for the purpose of facilitating its leaving the United Kingdom;”.
- (9) In section 160A(2) of the Environmental Protection Act 1990 (regulations and orders) (as inserted by section 63), in the Table, at the appropriate place insert—

“section 141 (imports, exports and transit of waste)	<p>regulations that—</p> <ol style="list-style-type: none"> <li>(a) confer powers of entry, seizure or detention in circumstances where there is no such power under existing regulations under section 141,</li> <li>(b) provide for the charging of fees or charges that are not chargeable under existing regulations under that section,</li> <li>(c) provide for conduct to be a criminal offence which is not a criminal offence under existing regulations under that section,</li> <li>(d) increase the maximum penalty for a criminal offence under existing regulations under that section,</li> <li>(e) provide for conduct to be subject to a civil sanction (within the meaning given by</li> </ol>
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- section 141(5B)) which is not subject to a civil sanction under existing regulations under that section, or
- (f) amend, repeal or revoke a provision contained in primary legislation (within the meaning given by section 141(6)) or retained direct principal EU legislation.”

(10) In section 41 of the Environment Act 1995 (power to make schemes imposing charges)

- (a) in subsection (1), for paragraph (d) substitute—
- “(d) as a means of recovering costs incurred by it in performing functions in connection with the regulation of the importation or exportation of waste or the transit of waste for export, the Agency, the Natural Resources Body for Wales or SEPA may require the payment to it of such charges as may from time to time be prescribed;”;
- (b) after subsection (1) insert—
- “(1A) In paragraph (d) of subsection (1) “importation”, “exportation”, “transit of waste for export” and “waste” have the meaning they have in section 141 of the Environmental Protection Act 1990.”

(11) In regulation 46 of the Transfrontier Shipment of Waste Regulations 2007 (S.I. 2007/1711), omit paragraph (1).

### 63 Regulations under the Environmental Protection Act 1990

- (1) The Environmental Protection Act 1990 is amended as follows.
- (2) After section 160 insert—

#### “160A Regulations and orders

- (1) Regulations and orders under this Act are subject to the negative procedure, other than—
- (a) regulations or orders subject to the affirmative procedure by virtue of subsection (2);
- (b) regulations made by a Northern Ireland department under section 156 (power to give effect to retained EU obligations and international obligations);
- (c) an order under section 164(3) (commencement);
- (d) an order under paragraph 4 of Schedule 3 (statutory nuisance).
- (2) Regulations or orders made under a section listed in the first column of the following Table that are of the description specified in the second column are subject to the affirmative procedure—

<i>Section</i>	<i>Description of regulations or orders</i>
34D (prohibition on disposal of food waste to sewer: Wales)	any regulations under that section.

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<i>Section</i>	<i>Description of regulations or orders</i>
45AA(10) (separate collection of waste: Wales)	any regulations under that section.
78M(4) (offences of not complying with a remediation notice)	any order under that section.
79(1ZA) (statutory nuisance)	any regulations under that section.
80ZA(11) (fixed penalty notices)	any regulations under that section.
88A (litter from vehicles: England)	regulations that include provision falling within section 88A(3)(a) or (6).

- (3) Regulations and orders made under this Act by the Secretary of State or the Welsh Ministers are to be made by statutory instrument, other than an order under paragraph 4 of Schedule 3.
- (4) Where regulations or orders under this Act made or to be made by the Secretary of State—
- (a) are subject to the negative procedure, the statutory instrument containing them is subject to annulment in pursuance of a resolution of either House of Parliament;
  - (b) are subject to the affirmative procedure, they may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
- (5) Where regulations or orders under this Act made or to be made by the Welsh Ministers—
- (a) are subject to the negative procedure, the statutory instrument containing them is subject to annulment in pursuance of a resolution of Senedd Cymru;
  - (b) are subject to the affirmative procedure, they may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, Senedd Cymru.
- (6) See sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)) for the meaning of “the negative procedure” and “the affirmative procedure” in relation to regulations or orders under this Act made or to be made by the Scottish Ministers.
- (7) Any provision that may be made by regulations or order under this Act subject to the negative procedure may be made subject to the affirmative procedure.”
- (3) In section 45B omit subsection (3).
- (4) In section 78M omit subsection (7).
- (5) In section 161 (regulations, orders and directions)—
- (a) for the heading substitute “Directions”;
  - (b) omit subsections (1) to (4).



### *Waste enforcement and regulation*

#### **64 Powers to make charging schemes**

- (1) The Environment Act 1995 is amended as follows.
- (2) In section 41(1) (powers to make charging schemes) after paragraph (m) insert—
  - “(n) as a means of recovering costs incurred by it in performing functions conferred by regulations made under Schedule 4 or 5 to the Environment Act 2021, the Agency, the Natural Resources Body for Wales or SEPA may require the payment to it of such charges as may from time to time be prescribed;
  - (o) as a means of recovering costs incurred by it in performing functions conferred by the End-of-Life Vehicles (Producer Responsibility) Regulations 2005 (S.I. 2005/263), the Agency, the Natural Resources Body for Wales or SEPA may require the payment to it of such charges as may from time to time be prescribed;
  - (p) as a means of recovering costs incurred by it in performing functions conferred by the Waste Electrical and Electronic Equipment Regulations 2013 (S.I. 2013/3113), the Agency, the Natural Resources Body for Wales or SEPA may require the payment to it of such charges as may from time to time be prescribed;
  - (q) as a means of recovering costs incurred by it in performing functions relating to section 33(1) of the Environmental Protection Act 1990, the Agency or the Natural Resources Body for Wales may require the payment to it of such charges as may from time to time be prescribed;
  - (r) as a means of recovering costs incurred by it in performing functions relating to regulation 12(1) of the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154) in relation to a regulated facility which is a waste operation (within the meaning of those Regulations), the Agency or the Natural Resources Body for Wales may require the payment to it of such charges as may from time to time be prescribed.”
- (3) In section 56(1) (interpretation)—
  - (a) in the definition of “environmental licence”, in the application of Part 1 of the Act in relation to an appropriate agency—
    - (i) in paragraph (j) for the words from “WEEE” to the end substitute “waste operation (within the meaning of those Regulations),”;
    - (ii) omit paragraphs (l) to (o);
  - (b) in the definition of “environmental licence”, in the application of Part 1 of the Act in relation to the Scottish Environment Protection Agency, omit paragraphs (l) to (o).
- (4) Until the repeal of section 93 of the Environment Act 1995 (“the 1995 Act”) by section 50 of this Act is fully in force, section 41(1)(n) of the 1995 Act has effect as if the reference to Schedule 4 to this Act included a reference to section 93 of the 1995 Act.

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## **65 Waste charging: Northern Ireland**

- (1) In the Waste and Contaminated Land (Northern Ireland) Order 1997 (S.I. 1997/2778 (N.I. 19)), after Article 76 insert—

### *“Charging schemes*

#### **76A Power to make charging schemes**

- (1) As a means of recovering costs incurred by it in performing any functions mentioned in paragraph (2), the Department may require the payment to it of such charges as may be specified in or determined under a scheme made by the Department under this Article (referred to in this Article as a “charging scheme”).
- (2) The functions referred to in paragraph (1) are—
- (a) functions related to—
    - (i) Article 4(1); or
    - (ii) regulation 18(1) of the Waste Management Licensing Regulations (Northern Ireland) 2003;
  - (b) functions conferred by regulations made under Article 5G;
  - (c) functions conferred by regulations made under Schedule 4 or 5 to the Environment Act 2021;
  - (d) functions conferred by the End-of-Life Vehicles Regulations 2003;
  - (e) functions conferred by the End-of-Life Vehicles (Producer Responsibility) Regulations 2005;
  - (f) functions conferred by the Waste Batteries and Accumulators Regulations 2009;
  - (g) functions conferred by the Waste Electrical and Electronic Equipment Regulations 2013;
  - (h) functions in connection with the regulation of the importation or exportation of waste or the transit of waste for export.
- (3) In sub-paragraph (h) of paragraph (2) “importation”, “exportation”, “transit of waste for export” and “waste” have the meaning they have in section 141 of the Environmental Protection Act 1990.
- (4) A charging scheme must specify, in relation to any charge prescribed by the scheme, the description of person who is liable to pay the charge.
- (5) A charging scheme may—
- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities;
  - (b) provide for the times at which, and the manner in which, charges are to be paid;
  - (c) revoke or amend any previous charging scheme;
  - (d) contain supplemental, incidental, consequential or transitional provision for the purposes of the scheme.
- (6) Before making a charging scheme the Department must consult such persons as appear to the Department to be appropriate.

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- (7) The Department must, when it makes or amends a charging scheme—
  - (a) lay a copy of the scheme or amendments before the Assembly, and
  - (b) publish the scheme or the amendments.”
- (2) Until the repeal of Article 3 of the Producer Responsibility Obligations (Northern Ireland) Order 1998 (S.I. 1998/1762 (N.I. 16)) (“the 1998 Order”) by section 50 of this Act is fully in force, Article 76A(2)(c) of the Waste and Contaminated Land (Northern Ireland) Order 1997 (S.I. 1997/2778 (N.I. 19)) has effect as if the reference to Schedule 4 to this Act included a reference to Article 3 of the 1998 Order.
- (3) The Waste Management Licensing Regulations (Northern Ireland) 2003 (S.R. (N.I.) 2003 No. 493) are amended as follows.
- (4) In regulation 17 (exemptions from waste management licensing), in paragraph (4)—
  - (a) in sub-paragraph (b) for “and the fee (if any) required under regulation 18(12) have” substitute “has”;
  - (b) after sub-paragraph (b) insert “; and
  - (c) any fee required under regulation 20B has been paid.”
- (5) In regulation 18 (registration in connection with exempt activities)—
  - (a) in paragraph (3)(d) for “a payment of any fee in respect of each place where any such exempt activity is being carried on” substitute “payment, in respect of each place where any such exempt activity is being carried on, of any fee that may be required under regulation 20B”;
  - (b) in paragraph (9) for “and 47” substitute “, 47 and 49 to 52”;
  - (c) in paragraph (11)(b) for “specified in accordance with paragraph (12)” substitute “required under regulation 20B”;
  - (d) omit paragraph (12).
- (6) After regulation 20A insert—

**“20B Fees and charges for registration in connection with exempt activities**

- (1) There are to be charged by and paid to the Department—
  - (a) in respect of applications for registration, and
  - (b) in respect of the subsistence of registrations,such fees and charges as may be provided for by a scheme under paragraph (2) (but this is subject to regulations 18(4A) and 19(2)).
- (2) The Department may make, and from time to time revise, a scheme (“a charging scheme”) specifying—
  - (a) fees in respect of applications for registration, payable to the Department, by the applicant, in respect of each place to which an application relates;
  - (b) charges in respect of the subsistence of registrations, payable to the Department by persons to whom registrations have been issued.
- (3) The Department must, when it makes or amends a charging scheme—
  - (a) lay a copy of the scheme or amendments before the Assembly, and
  - (b) publish the scheme or the amendments.
- (4) A charging scheme may in particular—

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- (a) provide for fees or charges payable in respect of applications or the subsistence of registrations to differ according to the activities to which the applications or registrations relate (including by providing for no fee or charge in the case of some activities);
  - (b) provide for reductions of fees where conditions specified in the scheme are met;
  - (c) provide for the times at which, and the manner in which, payments of fees or charges are to be made;
  - (d) make such incidental, supplementary and transitional provision as appears to the Department to be appropriate.
- (5) If it appears to the Department that a person to whom a registration has been issued has failed to pay a charge due in respect of the subsistence of the registration, the Department may, by notice in writing served on that person, revoke the registration.
- (6) In this regulation—
- (a) “registration” means registration under regulation 18;
  - (b) any reference to an application for registration includes an application for renewal of a registration.”

## 66 Enforcement powers

Schedule 10 amends legislation about enforcement powers in relation to waste and other environmental matters.

## 67 Enforcement powers: Northern Ireland

- (1) Article 27 of the Waste and Contaminated Land (Northern Ireland) Order 1997 ([S.I. 1997/2778 \(N.I. 19\)](#)) (power to give directions) is amended as follows.
- (2) In paragraph (2) omit the words from “with a view” to the end.
- (3) After paragraph (2) insert—
  - “(2A) The Department may by notice—
  - (a) direct a registered carrier to collect controlled waste which is being kept in or on specified land and deliver it to a specified person on specified terms;
  - (b) direct any person who—
    - (i) is keeping controlled waste in or on any land, or
    - (ii) owns or occupies land in or on which controlled waste is being kept,
 to facilitate collection of the waste by a specified registered carrier to whom a direction in respect of the waste is given under subparagraph (a).”
- (4) In paragraph (3) for “paragraph (1) or (2)” substitute “this Article”.
- (5) In paragraph (4), for “of treating or disposing of” substitute “in relation to”.
- (6) After paragraph (4) insert—

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“(4A) A direction under paragraph (2A)(b) may require the person to whom it is given—

- (a) to pay to the specified registered carrier the reasonable costs of collecting and delivering the waste;
- (b) to pay to the specified person to whom the waste is delivered (“P”) the reasonable costs incurred by P in relation to the waste (including any costs P is required by a direction under this Article to pay to another person).”

(7) In paragraph (5) for “paragraph (1) or (2)” substitute “this Article”.

(8) In paragraph (6) for “paragraph (1) or (2)” substitute “this Article”.

(9) In paragraph (7) for the words from “, where” to the end substitute “pay any costs mentioned in paragraph (4) or (4A).”

(10) For paragraph (8) substitute—

“(8) In this Article—

- “specified” means specified in a direction under this Article;  
“registered carrier” means a person registered under Article 39 as a carrier of controlled waste.”

## **68 Littering enforcement**

(1) Part 4 of the Environmental Protection Act 1990 is amended as follows.

(2) In Section 88 (fixed penalty notices for leaving litter), for subsection (11) substitute—

“(11) The appropriate person may by regulations provide that—

- (a) an authorised officer of a litter authority must meet such conditions as may be prescribed in the regulations;
- (b) if an authorised officer of a litter authority fails to meet any such condition, the authority must revoke the officer’s authorisation.

(12) Regulations under subsection (11) may make different provision for different cases.

(13) Before making regulations under subsection (11), the appropriate person must consult such persons as the appropriate person thinks appropriate.”

(3) After section 88A insert—

### **“88B Guidance on littering enforcement in England and Wales**

(1) The appropriate person may issue guidance to litter authorities on the exercise of littering enforcement functions by those authorities and authorised officers of those authorities.

(2) A litter authority must have regard to that guidance when exercising any of its littering enforcement functions.

(3) The appropriate person may revise any guidance issued under this section at any time.

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- (4) Before issuing guidance, or revised guidance, under this section the appropriate person must consult such persons as the appropriate person thinks appropriate.
- (5) The Secretary of State must lay before Parliament and publish guidance, and any revised guidance, issued by the Secretary of State under this section.
- (6) The Welsh Ministers must lay before Senedd Cymru and publish guidance, and any revised guidance, issued by the Welsh Ministers under this section.
- (7) In this section—
  - “authorised officer”, in relation to a litter authority, means a person who is an authorised officer in relation to that authority for the purposes of—
    - (a) section 88 (fixed penalty notices for littering, see subsection (10) of that section),
    - (b) section 88A (fixed penalty notices for littering from vehicles in England, see subsection (4) of that section), or
    - (c) Schedule 3A (distribution of free printed matter, see paragraph 8 of that Schedule);
  - “littering enforcement function” means—
    - (a) any function of a litter authority, or of an authorised officer of that authority, conferred by or under sections 87 to 88A or Schedule 3A, or
    - (b) any function exercised for purposes connected with any of those sections or that Schedule.”
- (4) In section 98(1A) (definition of appropriate person), in paragraph (b) for “National Assembly for Wales” substitute “Welsh Ministers”.

## **69 Fixed penalty notices**

- (1) The Environmental Protection Act 1990 is amended as follows.
- (2) In section 33ZA (fixed penalty notices relating to depositing, treatment or disposal of waste: England)—
  - (a) in subsection (10), for the words from “the period” to the end substitute “a period specified by the authority.”;
  - (b) after that subsection insert—
    - “(10A) The Secretary of State may by regulations substitute different amounts for the amounts for the time being specified in subsections (9) and (10).”
- (3) In section 33ZB (fixed penalty notices relating to depositing, treatment or disposal of waste: Wales)—
  - (a) in subsection (10), for the words from “the period” to the end substitute “a period specified by the authority.”;
  - (b) after that subsection insert—
    - “(10A) The Welsh Ministers may by regulations substitute different amounts for the amounts for the time being specified in subsections (9) and (10).”

- (4) In section 34ZA (fixed penalty notices relating to transfer of household waste: England)—
- (a) in subsection (9), for the words from “within” to the end substitute “before the end of a period specified by the authority.”;
  - (b) after that subsection insert—

“(9A) The Secretary of State may by regulations substitute different amounts for the amounts for the time being specified in subsections (7)(b), (8) and (9).”
- (5) In section 34ZB (fixed penalty notices relating to transfer of household waste: Wales)—
- (a) in subsection (8), for the words from “the period” to the end substitute “a period specified by the authority.”;
  - (b) after that subsection insert—

“(8A) The Welsh Ministers may by regulations substitute different amounts for the amounts for the time being specified in subsections (7) and (8).”

## **70 Regulation of polluting activities**

In Schedule 1 to the Pollution Prevention and Control Act 1999, in paragraph 4 (permits)—

- (a) the existing text becomes sub-paragraph (1);
- (b) after that sub-paragraph insert—

“(2) In relation to England and Wales, imposing such a prohibition in relation to an activity except where the carrying on of the activity meets conditions determined by the regulators in accordance with the regulations.”

## **71 Waste regulation: amendment of Northern Ireland Order**

- (1) In Article 2(2) of the Waste and Contaminated Land (Northern Ireland) Order 1997 ([S.I. 1997/2778 \(N.I. 19\)](#)), in the definition of “the Department”, for “the Department of the Environment” substitute “the Department of Agriculture, Environment and Rural Affairs”.
- (2) To the extent that immediately before the commencement of this section a reference in that Order to “the Department” was to be read as being or including a reference to a department other than the Department of Agriculture, Environment and Rural Affairs (by virtue of Article 9(1) of the Departments (Transfer of Functions) Order (Northern Ireland) 2016 ([S.R. \(N.I.\) 2016 No. 76](#)) or otherwise), it is to continue to be so read.

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## PART 4

### AIR QUALITY AND ENVIRONMENTAL RECALL

#### *Air quality*

#### **72 Local air quality management framework**

Schedule 11 contains amendments of Part 4 of the Environment Act 1995 (air quality).

#### **73 Smoke control areas: amendments of the Clean Air Act 1993**

Schedule 12 makes provision—

- (a) for imposing financial penalties for the emission of smoke in smoke control areas in England,
- (b) about offences relating to the sale and acquisition of solid fuel in England,
- (c) for applying smoke control orders to vessels in England, and
- (d) for authorised fuels and exempted fireplaces to be listed in Wales.

#### *Environmental recall of motor vehicles etc*

#### **74 Environmental recall of motor vehicles etc**

- (1) The Secretary of State may by regulations make provision for, about or connected with the recall of relevant products that do not meet relevant environmental standards.
- (2) A “relevant product” is a product specified or described in the regulations.
- (3) Only the following types of product may be specified or described in the regulations—
  - (a) a mechanically propelled vehicle;
  - (b) a part of a mechanically propelled vehicle;
  - (c) an engine that is, or forms part of, machinery that is transportable (including by way of self-propulsion);
  - (d) a part of such an engine, or any other part of such machinery that is connected with the operation of the engine.
- (4) A “relevant environmental standard” means a standard that—
  - (a) by virtue of any enactment, a relevant product must meet,
  - (b) is relevant to the environmental impact of that product, and
  - (c) is specified in the regulations,
 and the regulations may provide that a reference in the regulations to a standard is to be construed as a reference to that standard as it has effect from time to time.
- (5) In subsection (4)(a) “enactment” has the same meaning as in the European Union (Withdrawal) Act 2018.
- (6) In subsection (4)(b) “environmental impact”, in relation to a relevant product, includes any impact on the environment caused by noise, heat or vibrations or any other kind of release of energy or emissions resulting from the use of the product.
- (7) Regulations under subsection (1) are subject to the affirmative procedure.



(8) Sections 75 to 77 make further provision about regulations under subsection (1).

## **75 Compulsory recall notices**

- (1) Regulations under section 74(1) may make provision for, about or connected with a power of the Secretary of State to give a compulsory recall notice to a manufacturer or distributor of a relevant product.
- (2) A “compulsory recall notice” is a notice that requires the recipient of the notice to organise the return of a relevant product to the recipient, or to any other person specified in the notice, from persons who have been supplied (whether or not directly by the recipient) with the product.
- (3) Provision for the Secretary of State to give a compulsory recall notice in relation to a relevant product must not permit the giving of such a notice unless the Secretary of State has reasonable grounds for believing the product does not meet a relevant environmental standard.
- (4) The regulations may provide that, where a relevant product forms part of another product, a compulsory recall notice may require its recipient to organise the return of that other product (whether or not it is a relevant product).
- (5) The regulations may provide that a compulsory recall notice may impose supplementary requirements on its recipient.
- (6) The regulations may confer a power on the Secretary of State to give a recipient of a compulsory recall notice a further notice (a “supplementary notice”) that imposes supplementary requirements on its recipient.
- (7) The following are examples of supplementary requirements—
  - (a) to secure that at least a specified proportion of products subject to a compulsory recall notice that are manufactured or distributed by the recipient are returned in accordance with the notice;
  - (b) to publicise a compulsory recall notice;
  - (c) to provide information to the Secretary of State;
  - (d) a prohibition on supplying, or offering or agreeing to supply, a product subject to a compulsory recall notice;
  - (e) to pay such compensation to a person who returns a product subject to a compulsory recall notice as may be specified;
  - (f) to make other specified arrangements for the purpose of mitigating the effect of returning a product on the person who returns it;
  - (g) to destroy, or arrange for the destruction of, a returned product;
  - (h) to take steps to modify, or arrange for the modification of, a returned product for the purpose of ensuring that the product complies with relevant environmental standards;
  - (i) to organise the return of a returned product to the person who initially returned it;
  - (j) to otherwise dispose of the product in such manner as may be specified.
- (8) In subsection (7) “specified” means specified, or described, in a compulsory recall notice or a supplementary notice.
- (9) The regulations may—

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- (a) make provision about appeals against a decision to give a compulsory recall notice or a supplementary notice;
- (b) make provision about the withdrawal of compulsory recall notices and supplementary notices (including provision about the effect of withdrawal).

## **76 Further provision about regulations under section 74**

- (1) Regulations under section 74(1) may impose a duty on a manufacturer or distributor of a relevant product to notify the Secretary of State if the person has reason to consider that the product does not meet a relevant environmental standard.
- (2) The regulations may confer a power on the Secretary of State—
  - (a) to require the provision of information by a manufacturer or distributor of a relevant product for the purpose of enabling the Secretary of State to consider whether, or how, to exercise a power to give a compulsory recall notice or a supplementary notice;
  - (b) to require the provision of samples of relevant products by such a manufacturer or distributor for that purpose.
- (3) The regulations may make provision for, about or connected with the enforcement of requirements imposed by or under the regulations including provision—
  - (a) for, about or connected with the designation of a person to exercise functions in connection with the enforcement of the requirements (“the enforcement authority”);
  - (b) for the functions of the enforcement authority to be exercised on its behalf by persons authorised in accordance with the regulations;
  - (c) requiring the provision of information by a manufacturer or distributor of a relevant product for purposes connected with the enforcement of the requirements;
  - (d) requiring the provision of samples of relevant products by such a manufacturer or distributor for those purposes;
  - (e) for, about or connected with the imposition of financial penalties by the enforcement authority;
  - (f) for the amount of financial penalties to be determined by the enforcement authority in accordance with the regulations;
  - (g) for such a determination to be made by reference to factors specified in the regulations which may include, for example, the turnover of a business or the costs of complying with the requirement being enforced (and the regulations may provide that the amount of a financial penalty may exceed the amount of those costs);
  - (h) about appeals against the imposition of a financial penalty.
- (4) The regulations may confer powers on the enforcement authority—
  - (a) to enter the premises of a manufacturer or distributor of a relevant product;
  - (b) to take documents or records from those premises (or make copies of such documents or records);
  - (c) to take samples of relevant products found on those premises,

where the authority has reasonable grounds for suspecting that the manufacturer or distributor has failed to comply with a requirement imposed by or under the regulations.

- (5) The regulations may make provision about warrants in connection with any power conferred by virtue of subsection (4).

## **77 Interpretation of sections 74 to 76**

In sections 74 to 76—

- “compulsory recall notice” has the meaning given by section 75(2);
- “distributor” has the meaning given by regulations under section 74(1), but may only include a person acting in the course of business;
- “manufacturer” has the meaning given by regulations under section 74(1) which may define that term by reference (in particular) to—
  - (a) a person’s involvement in the manufacture of a relevant product, or
  - (b) a person’s relationship with a person involved in the manufacture of a relevant product;
- “relevant environmental standard” has the meaning given by section 74(4);
- “relevant product” has the meaning given by section 74(2);
- “supplementary notice” has the meaning given by section 75(6).

## **PART 5**

### **WATER**

#### *Plans and proposals*

## **78 Water resources management plans, drought plans and joint proposals**

- (1) Chapter 1 of Part 3 of the Water Industry Act 1991 (general duties of water undertakers) is amended as follows.
- (2) In section 37A (water resources management plans)—
- (a) in the heading omit “: preparation and review”;
  - (b) in subsection (3)(b) omit from “(also” to the end;
  - (c) in subsection (4)—
    - (i) at the beginning insert “Section 39F contains provision about”;
    - (ii) omit “is set out in section 37B below”;
  - (d) in subsection (6) omit the words after paragraph (c);
  - (e) omit subsection (8);
  - (f) omit subsection (10).
- (3) Omit sections 37B and 37C (water resources management plans: publication and provision of information).
- (4) In section 37D (water resources management plans: supplementary)—
- (a) in subsection (1), in the words before paragraph (a), for “, 37AA or 37B” substitute “or 37AA”;
  - (b) in subsection (3)—
    - (i) in paragraph (a) for “to 37C” substitute “and 37AA”;
    - (ii) omit paragraph (b) (and the “and” before it).

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- (5) In section 39B (drought plans)—
- (a) in the heading omit “: preparation and review”;
  - (b) in subsection (4)(b) omit from “(also” to the end;
  - (c) for subsection (5) substitute—
    - “(5) Section 39F makes provision about the procedure for preparing and publishing a drought plan (or revised plan).”;
  - (d) in subsection (6)—
    - (i) in paragraph (c) omit from “in accordance” to the end;
    - (ii) omit the words after paragraph (c);
  - (e) omit subsection (7);
  - (f) in subsection (9), in the words before paragraph (a), omit from “(including” to “above)”.
- (6) Omit section 39C (drought plans: provision of information).
- (7) After section 39D insert—

**“39E Joint proposals**

- (1) The Minister may give a direction to two or more water undertakers to prepare and publish a joint proposal.
- (2) A joint proposal is a proposal that identifies measures that may be taken jointly by the undertakers for the purpose of improving the management and development of water resources.
- (3) A joint proposal must not contain measures that (if taken) would result in any water undertaker being unable to meet its obligations under this Part.
- (4) A direction under this section may, in particular, require that—
  - (a) a joint proposal takes a specified form;
  - (b) a joint proposal addresses a specified matter;
  - (c) a joint proposal be prepared—
    - (i) in relation to a specified area;
    - (ii) by reference to specified criteria;
    - (iii) on the basis of a specified assumption.
- (5) Directions under this section are to be given by an instrument in writing.
- (6) Each water undertaker to whom a direction applies must comply with the direction.
- (7) The duties of a water undertaker under this section are enforceable by the Minister under section 18.
- (8) In this section “the Minister” means—
  - (a) the Secretary of State, in relation to water undertakers whose areas are wholly or mainly in England, and
  - (b) the Welsh Ministers, in relation to water undertakers whose areas are wholly or mainly in Wales.
- (9) In this section “specified” means specified in a direction under this section.

### **39F Plans and joint proposals: regulations about procedure**

- (1) The Minister may by regulations make provision about the procedure for preparing and publishing—
  - (a) a water resources management plan,
  - (b) a drought plan, and
  - (c) a joint proposal,including any revised plans or proposals.
- (2) The regulations may provide for the sharing of information and, in particular, may require a water supply licensee to share such information with a water undertaker as may be reasonably requested.
- (3) The regulations may make provision about consultation to be carried out by water undertakers, including provision about—
  - (a) the persons to be consulted,
  - (b) the frequency and timing of any consultation, and
  - (c) the publication of statements relating to any consultation.
- (4) The regulations may make provision about the preparation and circulation of drafts, including provision for the Minister to require changes to a draft plan or proposal.
- (5) The regulations may make provision for the purposes of ensuring that persons likely to be affected by the plan or proposal have a reasonable opportunity to make representations to the Minister.
- (6) The regulations may make provision about how representations (and any comments on them by a water undertaker) are to be dealt with, and in respect of a plan mentioned in subsection (1)(a) or (b), the regulations may provide for—
  - (a) the Minister to cause an inquiry or other hearing to be held in connection with the plan, and
  - (b) section 250(2) to (5) of the Local Government Act 1972 (local inquiries: evidence and costs) to apply to such an inquiry or hearing (with or without modifications).
- (7) The regulations may make provision about commercially confidential information and its publication.
- (8) In this section “the Minister” means—
  - (a) the Secretary of State, in relation to water undertakers whose areas are wholly or mainly in England, and
  - (b) the Welsh Ministers, in relation to water undertakers whose areas are wholly or mainly in Wales.

### **39G Regulations under section 39F: directions**

- (1) Regulations made under section 39F may confer on the Minister power to make provision by directions.
- (2) Those directions are to be given by an instrument in writing.

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- (3) They may be—
  - (a) general directions applying to all water undertakers, or
  - (b) directions applying only to one or more water undertakers specified in the directions.
- (4) Each water undertaker to whom a direction applies must comply with the direction.
- (5) The duties of a water undertaker under this section are enforceable by the Minister under section 18.
- (6) In this section “the Minister” has the same meaning as in section 39F.

### **39H Regulations under section 39F: supplementary**

- (1) Regulations under section 39F are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under section 39F is subject to annulment in pursuance of a resolution of—
  - (a) either House of Parliament, in the case of regulations made by the Secretary of State;
  - (b) Senedd Cymru, in the case of regulations made by the Welsh Ministers.
- (3) Subsection (4) applies in relation to a statutory instrument containing both—
  - (a) regulations made by the Secretary of State under section 39F, and
  - (b) regulations made by the Welsh Ministers under section 39F.
- (4) If in accordance with subsection (2)(a) or (b) (negative resolution procedure) —
  - (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing regulations made by the Secretary of State be annulled, or
  - (b) Senedd Cymru resolves that an instrument containing regulations made by the Welsh Ministers be annulled,
 the instrument is to have no further effect and Her Majesty may by Order in Council revoke the instrument.
- (5) Section 213(2) to (2B) applies to regulations made by the Welsh Ministers under section 39F as it applies to regulations made by the Secretary of State.”

## **79 Drainage and sewerage management plans**

In the Water Industry Act 1991, after section 94 insert—

### **“94A Drainage and sewerage management plans: preparation and review**

- (1) Each sewerage undertaker must prepare, publish and maintain a drainage and sewerage management plan.
- (2) A drainage and sewerage management plan is a plan for how the sewerage undertaker will manage and develop its drainage system and sewerage system so as to be able, and continue to be able, to meet its obligations under this Part.

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- (3) A drainage and sewerage management plan must address in particular—
  - (a) the capacity of the undertaker’s drainage system and sewerage system,
  - (b) an assessment of the current and future demands on the undertaker’s drainage system and sewerage system,
  - (c) the resilience of the undertaker’s drainage system and sewerage system,
  - (d) the measures the undertaker intends to take or continue for the purpose in subsection (2),
  - (e) the likely sequence and timing for implementing those measures,
  - (f) relevant environmental risks and how those risks are to be mitigated, and
  - (g) any other matters specified by the Minister in directions.
- (4) Section 94C contains provision about the preparation and publication of a drainage and sewerage management plan (including a revised plan).
- (5) Before each anniversary of the date when its plan (or revised plan) was last published, the sewerage undertaker must—
  - (a) review its plan, and
  - (b) send a statement of the conclusions of its review to the Minister.
- (6) The sewerage undertaker must prepare and publish a revised plan in each of the following cases—
  - (a) following conclusion of its annual review, if the review indicated a material change of circumstances;
  - (b) if directed to do so by the Minister;
  - (c) in any event, not later than the end of the period of 5 years beginning with the date when the plan (or the revised plan) was last published.
- (7) The Minister may give directions specifying—
  - (a) the form which a drainage and sewerage management plan must take;
  - (b) the planning period to which a drainage and sewerage management plan must relate.
- (8) The duties of a sewerage undertaker under this section are enforceable by the Minister under section 18.
- (9) In this section references—
  - (a) to a drainage system of a sewerage undertaker, are to any drainage system (within the meaning of section 114A) maintained or operated by the sewerage undertaker which is not part of its sewerage system;
  - (b) to the sewerage system of a sewerage undertaker, have the same meaning as in Chapter 1A of Part 2 (see section 17BA(7)).
- (10) In this section “the Minister” means—
  - (a) the Secretary of State, in relation to sewerage undertakers whose areas are wholly or mainly in England, and
  - (b) the Welsh Ministers, in relation to sewerage undertakers whose areas are wholly or mainly in Wales.



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#### **94B Drainage and sewerage management plans: power to amend period**

- (1) The Minister may by order made by statutory instrument amend the period for the time being specified in section 94A(6)(c).
- (2) In subsection (1) “the Minister” means—
  - (a) the Secretary of State, in relation to sewerage undertakers whose areas are wholly or mainly in England, and
  - (b) the Welsh Ministers, in relation to sewerage undertakers whose areas are wholly or mainly in Wales.
- (3) A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of—
  - (a) either House of Parliament, in the case of an order made by the Secretary of State;
  - (b) Senedd Cymru, in the case of an order made by the Welsh Ministers.
- (4) Subsection (5) applies in relation to a statutory instrument containing both—
  - (a) an order made by the Secretary of State under subsection (1), and
  - (b) an order made by the Welsh Ministers under subsection (1).
- (5) If in accordance with subsection (3)(a) or (b) (negative resolution procedure)—
  - (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing regulations made by the Secretary of State be annulled, or
  - (b) Senedd Cymru resolves that an instrument containing regulations made by the Welsh Ministers be annulled,the instrument is to have no further effect and Her Majesty may by Order in Council revoke the instrument.

#### **94C Drainage and sewerage management plans: regulations about procedure**

- (1) The Minister may by regulations make provision about the procedure for preparing and publishing a drainage and sewerage management plan (including a revised plan).
- (2) The regulations may provide for the sharing of information and, in particular, may require a sewerage licensee to share such information with a sewerage undertaker as may be reasonably requested.
- (3) The regulations may make provision about consultation to be carried out by sewerage undertakers, including provision about—
  - (a) the persons to be consulted,
  - (b) the frequency and timing of any consultation, and
  - (c) the publication of statements relating to any consultation.
- (4) The regulations may make provision about the preparation and circulation of draft plans, including provision for the Minister to require changes to a draft plan.



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- (5) The regulations may make provision for the purposes of ensuring that persons likely to be affected by the plan have a reasonable opportunity to make representations to the Minister.
- (6) The regulations may make provision about how representations (and any comments on them by the sewerage undertaker) are to be dealt with, including provision for—
  - (a) the Minister to cause an inquiry or other hearing to be held in connection with the plan, and
  - (b) section 250(2) to (5) of the Local Government Act 1972 (local inquiries: evidence and costs) to apply to such an inquiry or hearing (with or without modifications).
- (7) The regulations may make provision about commercially confidential information and its publication.
- (8) The regulations may confer on the Minister power to make provision by directions.
- (9) In this section “the Minister” means—
  - (a) the Secretary of State, in relation to sewerage undertakers whose areas are wholly or mainly in England, and
  - (b) the Welsh Ministers, in relation to sewerage undertakers whose areas are wholly or mainly in Wales.

#### **94D Regulations under section 94C: supplementary**

- (1) Regulations under section 94C are to be made by statutory instrument.
- (2) A statutory instrument containing regulations under section 94C is subject to annulment in pursuance of a resolution of—
  - (a) either House of Parliament, in the case of regulations made by the Secretary of State, and
  - (b) Senedd Cymru, in the case of regulations made by the Welsh Ministers.
- (3) Subsection (4) applies in relation to a statutory instrument containing both—
  - (a) regulations made by the Secretary of State under section 94C, and
  - (b) regulations made by the Welsh Ministers under section 94C.
- (4) If in accordance with subsection (2)(a) or (b) (negative resolution procedure)—
  - (a) either House of Parliament resolves that an address be presented to Her Majesty praying that an instrument containing regulations made by the Secretary of State be annulled, or
  - (b) Senedd Cymru resolves that an instrument containing regulations made by the Welsh Ministers be annulled,the instrument is to have no further effect and Her Majesty may by Order in Council revoke the instrument.
- (5) Section 213(2) to (2B) applies to regulations made by the Welsh Ministers under section 94C as it applies to regulations made by the Secretary of State.

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### **94E Drainage and sewerage management plans: directions**

- (1) In this section “directions” means directions given under—
  - (a) section 94A, or
  - (b) regulations under section 94C.
- (2) Directions are to be given by an instrument in writing.
- (3) Directions may be—
  - (a) general directions applying to all sewerage undertakers, or
  - (b) directions applying only to one or more sewerage undertakers specified in the directions.
- (4) Each sewerage undertaker to whom a direction applies must comply with the direction.
- (5) The duties of a sewerage undertaker under this section are enforceable under section 18 by—
  - (a) the Secretary of State, in the case of directions given by the Secretary of State, and
  - (b) the Welsh Ministers, in the case of directions given by the Welsh Ministers.”

### *Storm overflows*

## **80 Storm overflows**

- (1) In Part 4 of the Water Industry Act 1991 (sewerage services), after Chapter 3 insert—

### **“CHAPTER 4**

#### STORM OVERFLOWS

### **141A Storm overflow discharge reduction plan**

- (1) The Secretary of State must prepare a plan for the purposes of—
  - (a) reducing discharges from the storm overflows of sewerage undertakers whose area is wholly or mainly in England, and
  - (b) reducing the adverse impacts of those discharges.
- (2) The reference in subsection (1)(a) to reducing discharges of sewage includes—
  - (a) reducing the frequency and duration of the discharges, and
  - (b) reducing the volume of the discharges.
- (3) The reference in subsection (1)(b) to reducing adverse impacts includes—
  - (a) reducing adverse impacts on the environment, and
  - (b) reducing adverse impacts on public health.
- (4) The plan may in particular include proposals for—

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- (a) reducing the need for anything to be discharged by the storm overflows;
  - (b) treating sewage that is discharged by the storm overflows;
  - (c) monitoring the quality of watercourses, bodies of water or water in underground strata into which the storm overflows discharge;
  - (d) obtaining information about the operation of the storm overflows.
- (5) When preparing the plan the Secretary of State must consult—
- (a) the Environment Agency,
  - (b) the Authority,
  - (c) the Council,
  - (d) Natural England,
  - (e) sewerage undertakers whose area is wholly or mainly in England, or persons representing them, and
  - (f) such other persons as the Secretary of State considers appropriate.
- (6) The Secretary of State must publish the plan before 1 September 2022.
- (7) The Secretary of State may at any time revise the plan, having consulted the persons referred to in subsection (5), and must publish any revised version.
- (8) The plan, and any revised version of it, must be laid before Parliament once it is published.

#### **141B Progress reports on storm overflow discharge reduction plan**

- (1) The Secretary of State must publish reports (“progress reports”) relating to the plan under section 141A.
- (2) A progress report is to contain the Secretary of State’s assessment of—
- (a) the progress made, during the period to which the report relates, in implementing the proposals in the plan (or any revised version of it), and
  - (b) the effect of that progress on the matters referred to in section 141A(1) (a) and (b).
- (3) The first progress report must relate to the period of three years beginning with the day on which the plan under section 141A is first published.
- (4) Subsequent progress reports must relate to successive periods of five years after the period referred to in subsection (3).
- (5) A progress report must be published within 12 weeks following the last day of the period to which it relates.
- (6) A progress report must be laid before Parliament once it is published.

#### **141C Annual reports on discharges from storm overflows**

- (1) A sewerage undertaker whose area is wholly or mainly in England must publish annual reports in relation to the undertaker’s storm overflows (“storm overflow reports”).

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- (2) A storm overflow report must specify, for each of the sewerage undertaker's storm overflows—
  - (a) the location of the storm overflow;
  - (b) the watercourse, body of water or underground strata into which the storm overflow discharges;
  - (c) the frequency and duration of discharges from the storm overflow in the period to which the report relates;
  - (d) where the information is available, the volume of each discharge in that period;
  - (e) information on any investigations that have taken place or improvement works that have been undertaken in relation to the storm overflow during that period.
- (3) Storm overflow reports are to relate to successive calendar years, starting with 2021.
- (4) A storm overflow report must be published by a sewerage undertaker before 1 April in the year after the calendar year to which it relates.
- (5) A storm overflow report must—
  - (a) be in a form which allows the public readily to understand the information contained in the report, and
  - (b) be published in a way which makes the report readily accessible to the public.
- (6) The duties of a sewerage undertaker under this section are enforceable under section 18 by—
  - (a) the Secretary of State, or
  - (b) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.

#### **141D Environment Agency reports**

- (1) The Environment Agency must publish annual reports in relation to the operation of storm overflows of sewerage undertakers whose area is wholly or mainly in England.
- (2) A report under this section must specify—
  - (a) the location of the storm overflows;
  - (b) the watercourse, body of water or underground strata into which the storm overflows discharge;
  - (c) the frequency and duration of discharges from the storm overflows in the period to which the report relates;
  - (d) where the information is available, the volume of each discharge in that period.
- (3) Reports under this section are to relate to successive calendar years, starting with 2021.
- (4) A storm overflow report must be published by the Environment Agency —
  - (a) before 1 April in the year after the calendar year to which it relates, and

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- (b) in such manner as the Environment Agency thinks fit.

#### **141E Interpretation of Chapter 4**

- (1) In this Chapter, references to a storm overflow of a sewerage undertaker are to any structure or apparatus—
  - (a) which is comprised in the sewerage system of the sewerage undertaker, and
  - (b) which, when the capacity of other parts of the system downstream or of storage tanks at sewage disposal works is exceeded, relieves them by discharging their excess contents into inland waters, underground strata or the sea.
- (2) References in this Chapter to discharges from a storm overflow do not include discharges occurring as a result of—
  - (a) electrical power failure at sewage disposal works,
  - (b) mechanical breakdown at sewage disposal works,
  - (c) rising main failure, or
  - (d) blockage of any part of the sewerage system downstream of the storm overflow.
- (3) Section 17BA(7) (meaning of sewerage system of a sewerage undertaker) applies for the purposes of subsection (1).”

#### **81 Reporting on discharges from storm overflows**

In Chapter 4 of Part 4 of the Water Industry Act 1991 (as inserted by section 80 above), after section 141D insert—

##### **“141DA Reporting on discharges from storm overflows**

- (1) Where there is a discharge from a storm overflow of a sewerage undertaker whose area is wholly or mainly in England, the undertaker must publish the following information—
  - (a) that there has been a discharge from the storm overflow;
  - (b) the location of the storm overflow;
  - (c) when the discharge began;
  - (d) when the discharge ended.
- (2) The information referred to in subsection (1)(a) to (c) must be published within an hour of the discharge beginning; and that referred to in subsection (1)(d) within an hour of it ending.
- (3) The information must—
  - (a) be in a form which allows the public readily to understand it, and
  - (b) be published in a way which makes it readily accessible to the public.
- (4) The duty of a sewerage undertaker under this section is enforceable under section 18 by—
  - (a) the Secretary of State, or

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- (b) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.
- (5) The Secretary of State may by regulations make provision for exceptions from the duty in subsection (1) or (2) (for example, by reference to descriptions of storm overflows, frequency of discharge or the level of risk to water quality).
- (6) Before making regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (7) The Secretary of State may not make regulations under this section unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, each House of Parliament.”

## 82 Monitoring quality of water potentially affected by discharges

- (1) In Chapter 4 of Part 4 of the Water Industry Act 1991, after section 141DA insert—

**“141DB Monitoring quality of water potentially affected by discharges from storm overflows and sewage disposal works**

- (1) A sewerage undertaker whose area is wholly or mainly in England must continuously monitor the quality of water upstream and downstream of an asset within subsection (2) for the purpose of obtaining the information referred to in subsection (3).
- (2) The assets referred to in subsection (1) are—
  - (a) a storm overflow of the sewerage undertaker, and
  - (b) sewage disposal works comprised in the sewerage system of the sewerage undertaker,
 where the storm overflow or works discharge into a watercourse.
- (3) The information referred to in subsection (1) is information as to the quality of the water by reference to—
  - (a) levels of dissolved oxygen,
  - (b) temperature and pH values,
  - (c) turbidity,
  - (d) levels of ammonia, and
  - (e) anything else specified in regulations made by the Secretary of State.
- (4) The duty of a sewerage undertaker under this section is enforceable under section 18 by—
  - (a) the Secretary of State, or
  - (b) the Authority, with the consent of or in accordance with a general authorisation given by the Secretary of State.
- (5) The Secretary of State may by regulations make —
  - (a) provision as how the duty under subsection (1) is to be carried out (for example, provision as to the type of monitor to be used and where monitors must be placed);
  - (b) provision for exceptions from the duty in subsection (1) (for example, by reference to descriptions of asset, frequency of discharge from an asset or the level of risk to water quality);

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- (c) provision for the publication by sewerage undertakers of information obtained pursuant to subsection (1).
  - (6) Before making regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.
  - (7) The Secretary of State may not make regulations under this section unless a draft of the statutory instrument containing the regulations has been laid before, and approved by resolution of, each House of Parliament.”
- (2) In section 213 of the Water Industry Act 1991 (power to make regulations) in subsection (1), for “or 105A” substitute “105A, 141DA or 141DB”.

### **83 Reduction of adverse impacts of storm overflows**

In Chapter 4 of Part 4 of the Water Industry Act 1991, after section 141DB insert—

#### **“141DC Reduction of adverse impacts of storm overflows**

- (1) A sewerage undertaker whose area is wholly or mainly in England must secure a progressive reduction in the adverse impacts of discharges from the undertaker’s storm overflows.
- (2) The reference in subsection (1) to reducing adverse impacts includes—
  - (a) reducing adverse impacts on the environment, and
  - (b) reducing adverse impacts on public health.
- (3) The duty of a sewerage undertaker under this section is enforceable under section 18 by—
  - (a) the Secretary of State, or
  - (b) the Authority with the consent of or in accordance with a general authorisation given by the Secretary of State.”

### **84 Report on elimination of discharges from storm overflows**

- (1) The Secretary of State must prepare a report on—
  - (a) the actions that would be needed to eliminate discharges from the storm overflows of sewerage undertakers whose areas are wholly or mainly in England, and
  - (b) the costs and benefits of those actions.
- (2) The Secretary of State must publish the report before 1 September 2022.
- (3) The report must be laid before Parliament once it is published.

*Regulation of water and sewerage undertakers*

### **85 Authority’s power to require information**

In the Water Industry Act 1991, after section 27 insert—

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**“27ZA Power to require information for purpose of monitoring**

- (1) The Authority may, for the purpose of performing its duty under section 27(1) or (2), serve a notice under subsection (2) on—
  - (a) a water undertaker or sewerage undertaker;
  - (b) a water supply licensee or sewerage licensee.
- (2) A notice under this subsection is a notice which requires the person on whom it is served—
  - (a) to produce to the Authority, at a time and place specified in the notice (which must be reasonable), any documents specified or described in the notice which are in that person’s custody or under that person’s control, or
  - (b) to provide to the Authority, at a time and place and in the form and manner specified in the notice (which must be reasonable), information specified or described in the notice.
- (3) The requirements imposed by a notice under subsection (2) are enforceable by the Authority under section 18.
- (4) Nothing in this section requires a disclosure of information that would contravene the data protection legislation (but in determining whether a disclosure would do so, take into account the duty imposed by this section).
- (5) In subsection (4) “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).”

**86 Water and sewerage undertakers in England: modifying appointments**

- (1) Part 2 of the Water Industry Act 1991 (appointment and regulation of undertakers) is amended as follows.
- (2) After section 12 insert—

*“Modification of appointment conditions: England*

**12A Modification by the Authority**

- (1) This section and sections 12B to 12I apply in relation to a company appointed under this Chapter whose area is wholly or mainly in England.
- (2) The Authority may make modifications of the conditions of the company’s appointment under this Chapter.
- (3) Before making any modifications under this section, the Authority must give notice—
  - (a) stating that it proposes to make modifications,
  - (b) setting out the proposed modifications and their effect,
  - (c) stating the reasons why it proposes to make the modifications, and
  - (d) specifying the time within which representations with respect to the proposed modifications may be made.



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- (4) That time must not be less than 42 days from the date of publication of the notice.
- (5) A notice under subsection (3) must be given—
  - (a) by publishing the notice in a way the Authority considers appropriate for bringing it to the attention of persons likely to be affected by the modifications, and
  - (b) by sending a copy of it to—
    - (i) each company holding an appointment under this Chapter the conditions of which the Authority proposes to modify,
    - (ii) any other company holding an appointment under this Chapter, any water supply licensee and any sewerage licensee, whose interests the Authority considers are likely to be materially affected by the modifications,
    - (iii) the Secretary of State,
    - (iv) any person whose functions are or include representing those within sub-paragraph (i) or (ii) in respect of interests of theirs that the Authority considers are likely to be materially affected by the modifications, and
    - (v) the Consumer Council for Water.
- (6) The Authority must consider any representations which are duly made.
- (7) If, within the time specified under subsection (3)(d), the Secretary of State directs the Authority not to make a modification, the Authority must comply with the direction.
- (8) Subsections (9) to (11) apply where, having complied with subsections (3) to (6), the Authority decides to proceed with making modifications.
- (9) The Authority must—
  - (a) publish the decision and the modifications in a way the Authority considers appropriate for bringing them to the attention of persons likely to be affected by the modifications,
  - (b) state the effect of the modifications,
  - (c) state how it has taken account of any representations duly made, and
  - (d) state the reason for any differences between the modifications and those set out in the notice under subsection (3).
- (10) Each modification has effect from the date specified by the Authority in relation to that modification (subject to the giving of a direction under paragraph 2 of Schedule 2ZA).
- (11) The date specified may not be less than 56 days from publication of the decision to make the modification (except as provided in section 12B).

### **12B Modification of conditions of appointment: early effective date**

- (1) The date specified by virtue of section 12A(10) in relation to a modification under that section may be less than 56 days from the publication of the decision to make the modification if—

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- (a) the Authority considers it necessary or expedient for the modification to have effect before the 56 days expire, and
  - (b) the consultation condition is satisfied.
- (2) The consultation condition is that the notice under section 12A relating to the modification—
- (a) stated the date from which the Authority proposed that the modification should have effect,
  - (b) stated the Authority’s reasons for proposing that the modification should have effect from a date less than 56 days from the decision to modify, and
  - (c) explained why, in the Authority’s view, that would not have a material adverse effect on any person holding an appointment under this Chapter.

### **12C Modifications of conditions under section 12A: supplementary**

- (1) This section applies where under section 12A the Authority modifies the conditions of any appointment under this Chapter.
- (2) The Authority may make such incidental or consequential modifications of the conditions of any appointments as it considers necessary or expedient.
- (3) The modification of a condition of an appointment has effect subject to the giving of a direction under paragraph 2 of Schedule 2ZA in relation to the decision to which the modification relates.

### **12D Appeal to the CMA**

- (1) An appeal lies to the CMA against a decision by the Authority to proceed with the modification under section 12A of a condition of an appointment under this Chapter.
- (2) An appeal may be brought under this section only by—
  - (a) a company holding an appointment under this Chapter the conditions of which the Authority has decided to modify,
  - (b) any other company holding an appointment under this Chapter, any water supply licensee or any sewerage licensee, whose interests are materially affected by the decision,
  - (c) a person whose functions are or include representing those within paragraph (a) or (b) in respect of interests of theirs which are materially affected by the decision, or
  - (d) the Consumer Council for Water.
- (3) The permission of the CMA is required for the bringing of an appeal under this section.
- (4) The CMA may refuse permission only on one of the following grounds—
  - (a) in relation to an appeal brought by a company, water supply licensee or sewerage licensee within subsection (2)(b), that the interests of the company or licensee are not materially affected by the decision;

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- (b) in relation to an appeal brought by a person within subsection (2)(c), that the interests of the person represented are not materially affected by the decision;
- (c) in relation to any appeal, that the appeal is brought for reasons that are trivial or vexatious, or has no reasonable prospect of success.

### **12E Procedure on appeal to CMA**

- (1) Schedule 2ZA makes provision about the procedure for appeals under section 12D.
- (2) Except where specified otherwise in that Schedule, the functions of the CMA with respect to an appeal under section 12D are to be carried out by a group constituted for that purpose by the chair of the CMA under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

### **12F Determination by CMA of appeal**

- (1) This section applies to an appeal brought under section 12D.
- (2) In determining an appeal, the CMA must have regard, to the same extent as is required of the Authority, to—
  - (a) the Authority’s duties under section 2, and
  - (b) the Authority’s strategic priorities and objectives as set out in a statement under section 2A.
- (3) In determining the appeal the CMA—
  - (a) may have regard to any matter to which the Authority was not able to have regard in relation to the decision which is the subject of the appeal, but
  - (b) must not, in the exercise of that power, have regard to any matter to which the Authority would not have been entitled to have regard in reaching its decision had it had the opportunity of doing so.
- (4) The CMA may allow the appeal only to the extent that it is satisfied that the decision appealed against was wrong on one or more of the following grounds—
  - (a) that the Authority failed properly to have regard to any matter mentioned in subsection (2),
  - (b) that the Authority failed to give appropriate weight to any matter mentioned in subsection (2),
  - (c) that the decision was based, wholly or partly, on an error of fact,
  - (d) that the modifications fail to achieve, in whole or in part, the effect stated by the Authority by virtue of section 12A(9)(b),
  - (e) that the Authority did not follow the procedure required by sections 12A to 12C, or
  - (f) that the decision was otherwise wrong in law.
- (5) To the extent that the CMA does not allow the appeal, it must confirm the decision appealed against.

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### **12G CMA's powers on allowing an appeal**

- (1) Where the CMA allows an appeal under section 12D to any extent, it must do one or both of the following—
  - (a) quash the decision (to the extent that the appeal is allowed);
  - (b) remit the matter back to the Authority for reconsideration and determination in accordance with any directions given by the CMA.
- (2) A direction under subsection (1) must not require the Authority to do anything that it would not have power to do (apart from the direction).
- (3) The Authority must comply with a direction given to it under that subsection.

### **12H Time limits for CMA to determine an appeal**

- (1) The CMA must determine an appeal within the period of 4 months beginning with the permission date, unless subsection (2) applies.
- (2) This subsection applies where—
  - (a) the CMA has received representations on the timing of the determination from a party to the appeal, and
  - (b) it is satisfied that there are special reasons why the determination cannot be made within the period specified in subsection (1).
- (3) Where subsection (2) applies, the CMA must determine an appeal within the period specified by it, not being longer than the period of 5 months beginning with the permission date.
- (4) Where subsection (2) applies, the CMA must also—
  - (a) inform the parties to the appeal of the time limit for determining the appeal, and
  - (b) publish that time limit in a way it considers appropriate to bring it to the attention of any other persons likely to be affected by the determination.
- (5) References in this section to the permission date are to the date on which the CMA gave permission to bring the appeal in accordance with section 12D(3).
- (6) In this section and in section 12I any reference to a party to an appeal is to be read in accordance with Schedule 2ZA.

### **12I Determination of appeal by CMA: supplementary**

- (1) A determination by the CMA on an appeal—
  - (a) must be contained in an order made by the CMA;
  - (b) must set out the reasons for the determination;
  - (c) takes effect at the time specified in the order or determined in accordance with provision made in the order;
  - (d) must be notified by the CMA to the parties to the appeal;
  - (e) must be published by the CMA—
    - (i) as soon as reasonably practicable after the determination is made;

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- (ii) in a way the CMA considers appropriate to bring it to the attention of any person likely to be affected by it (other than a party to the appeal).
  - (2) The CMA may exclude from publication any information it is satisfied is—
    - (a) commercial information, the disclosure of which would, or in the CMA’s opinion might, significantly harm the legitimate business interests of an undertaking to which it relates, or
    - (b) information relating to the private affairs of an individual, the disclosure of which would, or in the CMA’s opinion might, significantly harm the individual’s interests.
  - (3) The Authority must take such steps as it considers requisite for it to comply with an order of the CMA under subsection (1)(a).
  - (4) The steps must be taken—
    - (a) if a time is specified in (or is to be determined in accordance with) the order, within that time;
    - (b) in any other case, within a reasonable time.
  - (5) Section 12C applies where a condition of a licence is modified in accordance with section 12G as it applies where a condition of a licence is modified under section 12A.”
- (3) For the italic heading before section 13 substitute—

*“Modification of appointment conditions: Wales”.*

- (4) In section 13 (modification by agreement), before subsection (1) insert—
- “(A1) This section and sections 14 to 16B apply in relation to a company appointed under this Chapter whose area is wholly or mainly in Wales.”
- (5) Before section 17 insert—

*“Modification of appointment conditions: England and Wales”.*

- (6) After Schedule 2 insert the Schedule set out in Schedule 13.
- (7) In paragraph 35(3) of Schedule 4 to the Enterprise and Regulatory Reform Act 2013 (CMA Panels), in the definition of “specialist utility functions”, after paragraph (c) insert—
- “(ca) an appeal under section 12D of that Act;”.

## **87 Electronic service of documents**

In section 216 of the Water Industry Act 1991 (service of documents) after subsection (4) insert—

- “(4A) Any document required or authorised by virtue of this Act to be served on any person may be served by electronic means.
- (4B) But a document may be served by electronic means on a person who is a consumer only if—

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- (a) the person has consented in writing to the receipt of documents by electronic means (and has not withdrawn that consent), and
  - (b) the document is sent to the number or address most recently specified by the person for that purpose.
- (4C) For the purposes of subsection (4B) “consumer” means a person who is liable to pay charges in respect of—
- (a) the supply of water to any premises, or
  - (b) the provision of sewerage services to any premises,
- but does not include a water undertaker, a water supply licensee, a sewerage undertaker, a sewerage licensee, or the Authority.”

### *Abstraction*

## **88 Water abstraction: no compensation for certain licence modifications**

- (1) In the Water Resources Act 1991, after section 61 insert—

### **“61ZA No compensation where modification to protect environment: England**

- (1) This section applies where—
- (a) a relevant licence is revoked or varied on or after 1 January 2028 in pursuance of a direction under section 54 or 56, and
  - (b) the ground for revoking or varying the licence is that the Secretary of State is satisfied the revocation or variation is necessary—
    - (i) having regard to a relevant environmental objective, or
    - (ii) to otherwise protect the water environment from damage.
- (2) A “relevant licence” is a licence to abstract water that—
- (a) is to abstract water in England only, and
  - (b) is to remain in force until revoked.
- (3) Where this section applies, no compensation is payable under section 61 in respect of the revocation or variation of the licence.
- (4) In this section the “water environment” means—
- (a) any inland waters (including, in relation to a lake, pond, river or watercourse that is for the time being dry, its bottom, channel or bed),
  - (b) any water contained in underground strata,
  - (c) any underground strata themselves,
- or any flora or fauna dependent on any of them.
- (5) In this section “relevant environmental objective” means an environmental objective within the meaning of whichever of the following is applicable—
- (a) the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 ([S.I. 2017/407](#));
  - (b) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 ([S.I. 2004/99](#));

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- (c) the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 ([S.I. 2003/3245](#)).

**61ZB No compensation where variation to remove excess headroom:  
England**

- (1) This section applies if a relevant licence is varied in pursuance of a direction under section 54 on or after 1 January 2028 so as to reduce the quantity of water the holder is authorised to abstract.
- (2) A “relevant licence” is a licence to abstract water that—
  - (a) is to abstract water in England only, and
  - (b) is to remain in force until revoked.
- (3) No compensation is payable under section 61 if—
  - (a) in each year during the 12 year period ending with the relevant date, the quantity of water abstracted in pursuance of the licence did not exceed 75% of the quantity of water the holder was authorised to abstract in that year, and
  - (b) the ground for varying the licence is that the Secretary of State is satisfied the variation does not reduce the quantity of water the holder is authorised to abstract to a level below that which the holder reasonably requires.
- (4) In subsection (3) the “relevant date” is the date on which the notice of the proposals for varying the licence was served on the holder of the licence.”
- (2) In section 27 of the Water Act 2003 (withdrawal of compensation for certain revocations and variations), after subsection (3) insert—
  - “(4) This section does not apply in respect of a licence revoked or varied on or after 1 January 2028 if the licence is a “relevant licence” within the meaning of section 61ZA of the Water Resources Act 1991.”
- (3) Omit paragraph 30(4) of Schedule 8 to the Water Act 2014.

*Water quality*

**89 Water quality: powers of Secretary of State**

- (1) The Secretary of State may by regulations amend or modify any legislation to which this section applies for the purpose of—
  - (a) making provision about the substances to be taken into account in assessing the chemical status of surface water or groundwater;
  - (b) specifying standards in relation to those substances or in relation to the chemical status of surface water or groundwater.
- (2) This section applies to —
  - (a) the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 ([S.I. 2017/407](#));
  - (b) the Water Environment (Water Framework Directive) (Northumbria River Basin District) Regulations 2003 ([S.I. 2003/3245](#));



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- (c) the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 ([S.I. 2004/99](#));
  - (d) the Groundwater Regulations (Northern Ireland) 2009 ([S.R. \(N.I.\) 2009 No. 254](#));
  - (e) the Water Framework Directive (Classification, Priority Substances and Shellfish Waters) Regulations (Northern Ireland) 2015 ([S.R. \(N.I.\) 2015 No. 351](#));
  - (f) the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017 ([S.R. \(N.I.\) 2017 No. 81](#));
  - (g) any regulations modifying that legislation made under or by virtue of the European Union (Withdrawal) Act 2018.
- (3) Regulations under subsection (1) may also, in connection with provision made under subsection (1)(a) or (b), amend or modify legislation to which this section applies so as to make provision—
- (a) setting objectives in relation to the substances about which the provision is made, or in relation to the chemical status of surface water or groundwater (including objectives to maintain specified standards or to achieve specified standards by specified dates);
  - (b) about how objectives set by the regulations are to be met, including provision requiring, or otherwise relating to, measures to be taken to achieve those objectives;
  - (c) requiring, or otherwise relating to, the monitoring or assessment of any matter relating to the chemical status of surface water or the chemical status of groundwater;
  - (d) about the classification of bodies of water according to their chemical status or any matter relating to their chemical status.
- (4) Regulations under this section may not contain provision that could be contained in—
- (a) regulations made by the Welsh Ministers under section 90, or
  - (b) regulations made by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland under section 91,
- unless those Ministers or that Department consents.
- (5) Regulations under this section may not contain provision applying to that part of a Scottish cross-border river basin district which is in Scotland, unless the Scottish Ministers consent.
- (6) Before making regulations under this section the Secretary of State must consult—
- (a) if the regulations apply to England (or part of England), the Environment Agency;
  - (b) if the regulations do not require the consent of the Welsh Ministers but apply to any part of a Welsh cross-border river basin district, the Welsh Ministers;
  - (c) if the regulations do not require the consent of the Scottish Ministers but apply to any part of a Scottish cross-border river basin district, the Scottish Ministers;
  - (d) any persons or bodies appearing to the Secretary of State to represent the interests of those likely to be affected by the regulations.
- (7) A “Scottish cross-border river basin district” is a river basin district which is partly in England and partly in Scotland.



- (8) A “Welsh cross-border river basin district” is a river basin district which is partly in England and partly in Wales.
- (9) Regulations under this section are subject to the negative procedure.

## **90 Water quality: powers of Welsh Ministers**

- (1) The Welsh Ministers may by regulations amend or modify any legislation to which this section applies for the purpose of—
  - (a) making provision about the substances to be taken into account in assessing the chemical status of surface water or groundwater;
  - (b) specifying standards in relation to those substances or in relation to the chemical status of surface water or groundwater.
- (2) This section applies to —
  - (a) the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 ([S.I. 2017/407](#));
  - (b) any regulations modifying that legislation made under or by virtue of the European Union (Withdrawal) Act 2018.
- (3) Regulations under subsection (1) may also, in connection with provision made under subsection (1)(a) or (b), amend or modify legislation to which this section applies so as to make provision—
  - (a) setting objectives in relation to the substances about which the provision is made, or in relation to the chemical status of surface water or groundwater (including objectives to maintain specified standards or to achieve specified standards by specified dates);
  - (b) about how objectives set by the regulations are to be met, including provision requiring, or otherwise relating to, measures to be taken to achieve those objectives;
  - (c) requiring, or otherwise relating to, the monitoring or assessment of any matter relating to the chemical status of surface water or the chemical status of groundwater;
  - (d) about the classification of bodies of water according to their chemical status or any matter relating to their chemical status.
- (4) Before making regulations under this section the Welsh Ministers must consult—
  - (a) the Natural Resources Body for Wales;
  - (b) if the regulations apply to any part of a river basin district which is partly in Wales and partly in England, the Secretary of State;
  - (c) any persons or bodies appearing to the Welsh Ministers to represent the interests of those likely to be affected by the regulations.
- (5) Regulations under this section may contain only provision which, if contained in an Act of Senedd Cymru, would (disregarding paragraphs 8(1)(c) and 11(1)(a) and (c) of Schedule 7B to the Government of Wales Act 2006) be within the legislative competence of the Senedd.
- (6) Regulations under this section are subject to the negative procedure.

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## **91 Water quality: powers of Northern Ireland department**

- (1) The Department of Agriculture, Environment and Rural Affairs in Northern Ireland may by regulations amend or modify any legislation to which this section applies for the purpose of—
  - (a) making provision about the substances to be taken into account in assessing the chemical status of surface water or groundwater;
  - (b) specifying standards in relation to those substances or in relation to the chemical status of surface water or groundwater.
- (2) This section applies to—
  - (a) the Groundwater Regulations (Northern Ireland) 2009 ([S.R. \(N.I.\) 2009 No. 254](#));
  - (b) the Water Framework Directive (Classification, Priority Substances and Shellfish Waters) Regulations (Northern Ireland) 2015 ([S.R. \(N.I.\) 2015 No. 351](#));
  - (c) the Water Environment (Water Framework Directive) Regulations (Northern Ireland) 2017 ([S.R. \(N.I.\) 2017 No. 81](#));
  - (d) any regulations modifying that legislation made under or by virtue of the European Union (Withdrawal) Act 2018.
- (3) Regulations under subsection (1) may also, in connection with provision made under subsection (1)(a) or (b), amend or modify legislation to which this section applies so as to make provision—
  - (a) setting objectives in relation to the substances about which the provision is made, or in relation to the chemical status of surface water or groundwater (including objectives to maintain specified standards or to achieve specified standards by specified dates);
  - (b) about how objectives set by the regulations are to be met, including provision requiring, or otherwise relating to, measures to be taken to achieve those objectives;
  - (c) requiring, or otherwise relating to, the monitoring or assessment of any matter relating to the chemical status of surface water or the chemical status of groundwater;
  - (d) about the classification of bodies of water according to their chemical status or any matter relating to their chemical status.
- (4) Before making regulations under this section the Department must consult any persons or bodies appearing to the Department to represent the interests of those likely to be affected by the regulations.
- (5) Regulations under this section may contain only provision which, if contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Assembly and would not require the Secretary of State's consent.
- (6) Regulations under this section are subject to the negative procedure.

## **92 Solway Tweed river basin district: power to transfer functions**

- (1) The Secretary of State may by regulations amend or modify the Solway Tweed Regulations in accordance with this section.

- (2) The “Solway Tweed Regulations” means the Water Environment (Water Framework Directive) (Solway Tweed River Basin District) Regulations 2004 ([S.I. 2004/99](#)).
- (3) The regulations may provide for a function under the Solway Tweed Regulations which is exercisable (to any extent)—
  - (a) by the Secretary of State and the Scottish Ministers jointly,
  - (b) by the Secretary of State and the Scottish Ministers concurrently, or
  - (c) only by the Secretary of State or the Scottish Ministers,to be exercised (to any extent) in another of those ways.
- (4) The regulations may provide for a function under the Solway Tweed Regulations which is exercisable (to any extent)—
  - (a) by the Environment Agency and SEPA jointly,
  - (b) by the Environment Agency and SEPA concurrently, or
  - (c) only by the Environment Agency or SEPA,to be exercised (to any extent) in another of those ways.
- (5) The regulations may make provision changing the geographical area in relation to which a function under the Solway Tweed Regulations is exercisable (or is exercisable by a specified person).
- (6) The regulations may also provide—
  - (a) for a function within subsection (3) to be exercisable only with the consent of, or after consultation with, the Secretary of State or the Scottish Ministers;
  - (b) for a function within subsection (4) to be exercisable only with the consent of, or after consultation with, the Environment Agency, SEPA, the Secretary of State or the Scottish Ministers.
- (7) The Secretary of State may make regulations under this section only with the consent of the Scottish Ministers.
- (8) Regulations under this section are subject to the negative procedure.
- (9) In this section “SEPA” means the Scottish Environment Protection Agency.

### **93 Water quality: interpretation**

In sections 89 to 92—

- “groundwater” has the same meaning as in the Water Framework Directive;
- “river basin district” means an area identified as such by or under any legislation to which the section in question applies;
- “surface water” has the same meaning as in the Water Framework Directive;
- “Water Framework Directive” means [Directive 2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy.

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### *Land drainage*

#### **94 Valuation of other land in drainage district: England**

(1) Section 37 of the Land Drainage Act 1991 (apportionment of internal drainage board’s drainage expenses) is amended in accordance with subsections (2) and (3).

(2) In subsection (5), in the words before paragraph (a), after “shall” insert “, subject to subsection (5ZA)”.

(3) After subsection (5) insert—

“(5ZA) The Secretary of State may by regulations make provision for the value of other land in an English internal drainage district to be determined in accordance with the regulations.

(5ZB) The provision that may be made under subsection (5ZA) includes, in particular, provision—

- (a) about methods to be applied, or factors to be taken into account, in determining the value of land;
- (b) for the value of land to be determined on the basis of estimates, assumptions or averages;
- (c) for the value of land to be determined by reference to such time or times as may be specified in the regulations;
- (d) for the value of land to be determined by reference to the value shown for the time being in a list or register prepared for the purposes of another enactment;
- (e) for determining the value of land which is only partly within the internal drainage district in question;
- (f) for the making of adjustments to what would otherwise be determined to be the value of land;
- (g) for land to be taken to have a nil value.

(5ZC) Regulations under subsection (5ZA) may apply in relation to—

- (a) English drainage boards specified in the regulations;
- (b) English drainage boards of a description specified in the regulations;
- (c) all English drainage boards.

(5ZD) Provision made by virtue of subsection (5ZC) may, in particular, include provision for an English drainage board—

- (a) to elect that the regulations are to apply to them, and
- (b) to make such an election in accordance with the procedure specified in the regulations.

(5ZE) Regulations under subsection (5ZA) may—

- (a) make different provision for different cases, including different provision in relation to different circumstances or different descriptions of English drainage board or of land;
- (b) make such incidental, supplementary, consequential, transitional, transitory or saving provision as the Secretary of State considers appropriate.

(5ZF) Provision made by virtue of subsection (5ZE)(b) may include provision which amends or repeals any provision of this Act.

(5ZG) Before making regulations under subsection (5ZA) the Secretary of State must consult such persons (if any) as the Secretary of State considers appropriate having regard to the extent to which the regulations are, in the view of the Secretary of State, likely to affect the valuation of any land.

(5ZH) Regulations may not be made under subsection (5ZA) unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.”

(4) In section 65(2) of that Act (regulations) after “Subject to” insert “section 37(5ZH)”.

## **95 Valuation of other land in drainage district: Wales**

(1) Section 83 of the Environment (Wales) Act 2016 (which amends the Land Drainage Act 1991) is amended as follows.

(2) In subsection (2)—

(a) for paragraph (a) substitute—

“(a) in subsection (5), in the words before paragraph (a), after “subject to subsection (5ZA)” insert “and subject to subsection (5A),”;

(b) in paragraph (b)—

(i) for the inserted subsection (5A) substitute—

“(5A) The Welsh Ministers may by regulations make provision for the value of other land in a Welsh internal drainage district to be determined in accordance with the regulations.”;

(ii) in each of the inserted subsections (5B) and (5C) for “The regulations” substitute “Regulations under subsection (5A)”;

(iii) for the inserted subsection (5D) substitute—

“(5D) Before making regulations under subsection (5A) the Welsh Ministers must consult such persons (if any) as they consider appropriate having regard to the extent to which the regulations are, in their view, likely to affect the valuation of any land.

(5E) Regulations may not be made under subsection (5A) unless a draft of the instrument containing them has been laid before, and approved by a resolution of, Senedd Cymru.”

(3) For subsection (3) substitute—

“(3) In section 65(2) (regulations) after “section 37(5ZH)” insert “and (5E),”.”

## **96 Valuation of agricultural land in drainage district: England and Wales**

(1) The Land Drainage Act 1991 is amended as follows.

(2) In section 41 (rates charged by reference to annual value of agricultural land and buildings), in subsection (2), at the end insert—

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“This is subject to section 41A below.”

(3) After section 41 insert—

**“41A Alternative method of calculating annual value of agricultural land and buildings**

(1) The appropriate national authority may by regulations make provision for the annual value of each chargeable property in an internal drainage district to be determined for the purposes of this Chapter by the drainage board for that district in accordance with the regulations.

Any determination made under the regulations is subject to sections 43 and 44 below.

(2) In this section “the appropriate national authority” means—

- (a) in the case of any English internal drainage district, the Secretary of State;
- (b) in the case of any Welsh internal drainage district, the Welsh Ministers.

(3) Regulations under subsection (1) may, in particular, make provision—

- (a) about the date by which a drainage board are to determine the annual value of each chargeable property in their internal drainage district;
- (b) about methods to be applied, or factors to be taken into account, in determining the annual value of a chargeable property;
- (c) for the annual value of a chargeable property to be determined on the basis of estimates, assumptions or averages;
- (d) for the annual value of a chargeable property to be determined by reference to such time or times as may be specified in the regulations;
- (e) for the annual value of a chargeable property to be determined by reference to the value shown for the time being in a list or register prepared for the purposes of another enactment;
- (f) for the annual value of a chargeable property to be determined by reference to the amount payable under a hypothetical transaction involving the property;
- (g) for determining the annual value of a chargeable property which is only partly within the internal drainage district in question;
- (h) for the making of adjustments to what would otherwise be determined to be the annual value of a chargeable property;
- (i) for the determination of the annual value of a chargeable property to be made on behalf of a drainage board by a person, or a person of a description, specified in the regulations;
- (j) about the appointment by the drainage board of such a person.

(4) Provision made by virtue of subsection (3)(f) may, in particular, include provision as to—

- (a) the assumptions to be made about—
  - (i) the date of the transaction;
  - (ii) the nature of the transaction;
  - (iii) the characteristics of the parties to the transaction;

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- (iv) the characteristics of the property;
    - (v) the terms of the transaction;
  - (b) any matters relating to the chargeable property which are to be taken into account or disregarded;
  - (c) any matters relating to comparable transactions which are to be taken into account or disregarded.
- (5) Regulations under subsection (1) may make provision which—
- (a) applies to a drainage board which have determined the annual values of the chargeable properties in their internal drainage district for the purposes of this Chapter under the regulations (regardless of whether any of those determinations has been replaced under section 43 below or altered on appeal under section 46 below), and
  - (b) requires the drainage board to make further determinations of those values for those purposes in accordance with the regulations at such times or at the end of such periods as may be specified in the regulations.
- (6) Provision made by virtue of subsection (5) may, in particular—
- (a) make provision in relation to such a further determination which is the same as or similar to that made in relation to an initial determination, or
  - (b) apply provision in the regulations relating to an initial determination to a further determination, with or without modifications.
- (7) Regulations made by the Secretary of State under subsection (1) may apply in relation to—
- (a) English drainage boards specified in the regulations;
  - (b) English drainage boards of a description specified in the regulations;
  - (c) all English drainage boards.
- (8) Regulations made by the Welsh Ministers under subsection (1) may apply in relation to—
- (a) Welsh drainage boards specified in the regulations;
  - (b) Welsh drainage boards of a description specified in the regulations;
  - (c) all Welsh drainage boards.
- (9) Provision made by virtue of subsection (7) or (8) may, in particular, include provision for an internal drainage board—
- (a) to elect that the regulations are to apply to them, and
  - (b) to make such an election in accordance with the procedure specified in the regulations.
- (10) Regulations under subsection (1) may—
- (a) make different provision for different cases, including different provision in relation to different circumstances or different descriptions of drainage board or of land;
  - (b) make such incidental, supplementary, consequential, transitional, transitory or saving provision as the appropriate national authority considers appropriate.

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- (11) Provision made by virtue of subsection (10)(b) may include provision which amends or repeals any provision of this Act.
  - (12) Before making regulations under subsection (1) the appropriate national authority must consult such persons (if any) as the authority considers appropriate having regard to the extent to which the regulations are, in the view of the authority, likely to affect the valuation of any chargeable properties.
  - (13) Regulations may not be made under subsection (1) by the Secretary of State unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.
  - (14) Regulations may not be made under subsection (1) by the Welsh Ministers unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, Senedd Cymru.”
- (4) In section 42 (determination of annual value)—
    - (a) in subsection (4) after “under this section” insert “or under regulations under section 41A(1) above”;
    - (b) in subsection (5) after “subsections (1) and (2) above” insert “or under regulations under section 41A above”.
  - (5) In section 44 (effect of determinations under section 43) in each of subsections (2) and (3) after “Subject to” insert “regulations under section 41A above and to”.
  - (6) In section 45 (appeals against determinations of annual value)—
    - (a) in subsection (1) after “determination under” insert “regulations under section 41A above or a determination under”;
    - (b) in subsection (3)(b) after “determination under” insert “regulations under section 41A above or a fresh determination under”;
    - (c) in subsection (7) after “determination under” insert “regulations under section 41A above or a determination under”.
  - (7) In section 46 (hearing and determination of appeals under section 45) in each of subsections (2)(a), (3), (4), (5), (6), (7) and (8) after “determination under” insert “regulations under section 41A above or a determination under”.
  - (8) In section 65(2) (regulations) after “section 37A(6) and (7),” insert “section 41A(13) and (14) and”.

## **97 Disclosure of Revenue and Customs information**

- (1) The Land Drainage Act 1991 is amended as follows.
- (2) After section 37 insert—



*“Disclosure of Revenue and Customs information*

**37A Disclosure of Revenue and Customs information**

- (1) An officer of the Valuation Office of Her Majesty’s Revenue and Customs may disclose Revenue and Customs information to a qualifying person for a qualifying purpose.
- (2) Information disclosed to a qualifying person under this section may be retained and used for any qualifying purpose.
- (3) Each of the following is a “qualifying person”—
  - (a) an internal drainage board;
  - (b) the Agency;
  - (c) the Natural Resources Body for Wales;
  - (d) a person authorised to exercise any function of a body within paragraph (a), (b) or (c) relating to drainage rates or special levies;
  - (e) a person providing services to a body within paragraph (a), (b) or (c) relating to drainage rates or special levies;
  - (f) the Secretary of State;
  - (g) the Welsh Ministers;
  - (h) any other person specified in regulations made by the appropriate national authority.
- (4) Each of the following is a “qualifying purpose”—
  - (a) enabling the qualifying person to whom the disclosure is made, or any other qualifying person, to carry out any functions conferred by or under Chapter 1 or 2 of this Part or section 75 of the Local Government Finance Act 1988;
  - (b) enabling the qualifying person to whom the disclosure is made, or any other qualifying person, to determine for the purposes of Part 1 how functions mentioned in paragraph (a) might be exercised by—
    - (i) an internal drainage board which is proposed to be constituted under that Part, or
    - (ii) the drainage board for an internal drainage district which is proposed to be constituted under that Part.
- (5) Regulations under subsection (3)(h) may only be made with the consent of the Commissioners for Her Majesty’s Revenue and Customs.
- (6) Regulations may not be made under subsection (3)(h) by the Secretary of State unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, each House of Parliament.
- (7) Regulations may not be made under subsection (3)(h) by the Welsh Ministers unless a draft of the instrument containing the regulations has been laid before, and approved by a resolution of, Senedd Cymru.
- (8) In this section—

“the appropriate national authority” means—

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- (a) the Secretary of State in relation to English internal drainage districts, and
- (b) the Welsh Ministers in relation to Welsh internal drainage districts;

“drainage rates” means drainage rates made by an internal drainage board under Chapter 2 of this Part;

“Revenue and Customs information” means information held as mentioned in section 18(1) of the Commissioners for Revenue and Customs Act 2005;

“special levy” means a special levy issued by an internal drainage board under regulations under section 75 of the Local Government Finance Act 1988.

### **37B Restrictions on onward disclosure of Revenue and Customs information**

- (1) Information disclosed under section 37A or this section may not be further disclosed unless that further disclosure is—
  - (a) to a qualifying person for a qualifying purpose,
  - (b) in pursuance of a court order,
  - (c) with the consent of each person to whom the information relates,
  - (d) required under any other enactment, or
  - (e) permitted under any other enactment.
- (2) Information may not be disclosed—
  - (a) under subsection (1)(a) to a qualifying person within section 37A(3)(d), (e), (f) or (g),
  - (b) under subsection (1)(a) to a person who is a qualifying person by virtue of regulations under section 37A(3)(h), where those regulations specify that this subsection is to apply in relation to the person, or
  - (c) under subsection (1)(e),
 except with the consent of the Commissioners for Her Majesty’s Revenue and Customs (which may be general or specific).
- (3) Information disclosed to a qualifying person under this section may be retained and used for any qualifying purpose.
- (4) A person commits an offence if the person contravenes subsection (1) or (2) by disclosing information relating to a person whose identity—
  - (a) is specified in the disclosure, or
  - (b) can be deduced from it.
- (5) It is a defence for a person charged with an offence under this section to prove that the person reasonably believed—
  - (a) that the disclosure was lawful, or
  - (b) that the information had already lawfully been made available to the public.
- (6) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine or to both;

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- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, to a fine or to both.
- (7) A prosecution under this section may be instituted only by, or with the consent of, the Director of Public Prosecutions.
- (8) In relation to an offence under this section committed before the coming into force of paragraph 24(2) of Schedule 22 to the Sentencing Act 2020 (increase in maximum term that may be imposed on summary conviction of offence triable either way) the reference in subsection (6)(a) to 12 months is to be read as a reference to 6 months.
- (9) This section is without prejudice to the pursuit of any remedy or the taking of any action in relation to a contravention of subsection (1) or (2) (whether or not subsection (4) applies to the contravention).
- (10) In this section—
  - “qualifying person” has the same meaning as in section 37A;
  - “qualifying purpose” has the same meaning as in that section.

### **37C Further provisions about disclosure under section 37A or 37B**

- (1) A disclosure of information under section 37A or 37B does not breach—
  - (a) any obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of information (however imposed).
- (2) But nothing in section 37A or 37B authorises the making of a disclosure—
  - (a) if the disclosure would contravene the data protection legislation (but in determining whether a disclosure would do so, take the powers conferred by those sections into account), or
  - (b) which is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- (3) Until the repeal of Part 1 of the Regulation of Investigatory Powers Act 2000 by paragraphs 45 and 54 of Schedule 10 to the Investigatory Powers Act 2016 is fully in force, subsection (2)(b) has effect as if it included a reference to that Part.
- (4) Revenue and customs information relating to a person which has been disclosed under section 37A or 37B is exempt information by virtue of section 44(1)(a) of the Freedom of Information Act 2000 (prohibition on disclosure) if its further disclosure—
  - (a) would specify the identity of the person to whom the information relates, or
  - (b) would enable the identity of such a person to be deduced.
- (5) In subsection (4) “revenue and customs information relating to a person” has the same meaning as in section 19(2) of the Commissioners for Revenue and Customs Act 2005.
- (6) In this section “data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3(9) of that Act).”

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- (3) In section 65(2) (regulations) after “and (5E),” insert “section 37A(6) and (7),”.
- (4) In section 70 (confidentiality of information obtained by Environment Agency and Natural Resources Body for Wales)—
- (a) the existing provision becomes subsection (1);
  - (b) after that subsection insert—
    - “(2) Subsection (1) does not apply to information obtained by virtue of section 37A (disclosure of Revenue and Customs information).”
- (5) In section 72(1) (interpretation), at the appropriate places insert—
- ““enactment” includes an enactment comprised in subordinate legislation within the meaning of the Interpretation Act 1978;”;
- ““English drainage board” means a drainage board for an English internal drainage district;”;
- ““English internal drainage district” means an internal drainage district which is wholly or mainly in England;”;
- ““Welsh drainage board” means a drainage board for a Welsh internal drainage district;”;
- ““Welsh internal drainage district” means an internal drainage district which is wholly or mainly in Wales.”.

## PART 6

### NATURE AND BIODIVERSITY

#### *Biodiversity gain in planning*

#### **98 Biodiversity gain as condition of planning permission**

Schedule 14 makes provision for biodiversity gain to be a condition of planning permission in England.

#### **99 Biodiversity gain in nationally significant infrastructure projects**

Schedule 15 makes provision about biodiversity gain in relation to development consent for nationally significant infrastructure projects.

#### **100 Biodiversity gain site register**

- (1) The Secretary of State may by regulations make provision for and in relation to a register of biodiversity gain sites (“the biodiversity gain site register”).
- (2) A biodiversity gain site is land where—
- (a) a person is required under a conservation covenant or planning obligation to carry out works for the purpose of habitat enhancement,
  - (b) that or another person is required to maintain the enhancement for at least 30 years after the completion of those works, and
  - (c) for the purposes of Schedule 7A to the Town and Country Planning Act 1990 the enhancement is made available to be allocated (conditionally or

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- unconditionally, and whether for consideration or otherwise) in accordance with the terms of the covenant or obligation to one or more developments for which planning permission is granted.
- (3) Regulations under this section must provide for the information in the register to be accessible to members of the public.
- (4) Regulations under this section may in particular make provision about—
- (a) the person who is to establish and maintain the biodiversity gain site register (who may be the Secretary of State, Natural England or another person);
  - (b) circumstances in which land is or is not eligible to be registered;
  - (c) applications to register land in the register;
  - (d) the information to be recorded in relation to any land that is registered;
  - (e) amendments to the register;
  - (f) removal of land from the register;
  - (g) fees payable in respect of any application under the regulations.
- (5) Provision under subsection (4)(c) may in particular include provision about—
- (a) who is entitled to apply to register land in the biodiversity gain site register;
  - (b) the procedure to be followed in making an application;
  - (c) the information to be provided in respect of an application;
  - (d) how an application is to be determined;
  - (e) appeals against the rejection of an application;
  - (f) financial penalties for the supply of false or misleading information in connection with an application.
- (6) Provision under subsection (4)(d) may in particular require the recording of the following in relation to any land registered in the biodiversity gain site register—
- (a) the location and area of the land;
  - (b) the works to be carried out on the land and the habitat enhancement to be achieved by them;
  - (c) information about the habitat of the land before the commencement of those works;
  - (d) the person who applied to register the land and (if different) the person by whom the requirement to carry out the works or maintain the habitat enhancement is enforceable;
  - (e) any development to which any of the habitat enhancement has been allocated;
  - (f) the biodiversity value (for the purposes of Schedule 7A to the Town and Country Planning Act 1990 or Schedule 2A to the Planning Act 2008) of any such habitat enhancement in relation to any such development.
- (7) Regulations under this section may amend subsection (2)(b) so as to substitute for the period for the time being specified there a different period of at least 30 years.
- (8) Regulations under this section making provision under subsection (4)(g) or (5)(f) are subject to the affirmative procedure.
- (9) Other regulations under this section are subject to the negative procedure.
- (10) The Secretary of State must keep under review—
- (a) the supply of land for registration in the biodiversity gain site register;

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- (b) whether the period specified in subsection (2)(b) or in paragraph 9(3) of Schedule 7A to the Town and Country Planning Act 1990 can be increased under subsection (7) or paragraph 9(4) of that Schedule without adversely affecting that supply.
- (11) In this section “development”, “habitat enhancement”, “planning obligation” and “planning permission” have the same meanings as in Schedule 7A to the Town and Country Planning Act 1990.

## **101 Biodiversity credits**

- (1) The Secretary of State may make arrangements under which a person who is entitled to carry out the development of any land may purchase a credit from the Secretary of State for the purpose of meeting the biodiversity gain objective referred to in Schedule 7A to the Town and Country Planning Act 1990 or Schedule 2A to the Planning Act 2008.
- (2) A credit is to be regarded for the purposes of that Schedule as having such biodiversity value as is determined under the arrangements.
- (3) The arrangements may in particular include arrangements relating to—
  - (a) applications to purchase credits;
  - (b) the amount payable in respect of a credit of a given value;
  - (c) proof of purchase;
  - (d) reimbursement for credits purchased for development which is not carried out.
- (4) In determining the amount payable under the arrangements for a credit of a given value the Secretary of State must have regard to the need to determine an amount which does not discourage the registration of land in the biodiversity gain sites register.
- (5) The Secretary of State must publish information about the arrangements, including in particular the amount payable for credits.
- (6) The Secretary of State may use payments received under arrangements under this section for the following purposes (only)—
  - (a) carrying out works, or securing the carrying out of works, for the purpose of habitat enhancement (within the meaning of Part 7A of the Town and Country Planning Act 1990) on land in England;
  - (b) purchasing interests in land in England with a view to carrying out works, or securing the carrying out of works, for that purpose;
  - (c) operating or administering the arrangements.
- (7) The references to works in subsection (6) do not include works which the Secretary of State is required to carry out apart from this section by virtue of any enactment.
- (8) The Secretary of State must publish reports relating to the discharge of the Secretary of State’s functions under subsections (1) and (6).
- (9) A report must relate to a period not exceeding a year which—
  - (a) in the case of the first report, begins on the date on which Schedule 7A to the Town and Country Planning Act 1990 comes into force in relation to any development (within the meaning of Part 3 of that Act), and
  - (b) in the case of any subsequent report, begins on the day after the last day of the period to which the previous report related.

- (10) A report must set out—
- (a) the total payments received under arrangements under this section in the period to which the report relates,
  - (b) how those payments have been used, and
  - (c) where those payments have been used for the purpose of carrying out or securing the carrying out of works for the purpose of habitat enhancement, the projected biodiversity value of the habitat enhancement at such time or times after completion of the works as the Secretary of State considers it appropriate to specify.

*Biodiversity objective and reporting*

**102 General duty to conserve and enhance biodiversity**

- (1) Section 40 of the Natural Environment and Rural Communities Act 2006 (duty to conserve biodiversity) is amended in accordance with subsections (2) to (7).
- (2) In the heading, after “conserve” insert “and enhance”.
- (3) For subsections (A1) and (1) substitute—
- “(A1) For the purposes of this section “the general biodiversity objective” is the conservation and enhancement of biodiversity in England through the exercise of functions in relation to England.
- (1) A public authority which has any functions exercisable in relation to England must from time to time consider what action the authority can properly take, consistently with the proper exercise of its functions, to further the general biodiversity objective.
- (1A) After that consideration the authority must (unless it concludes there is no new action it can properly take)—
- (a) determine such policies and specific objectives as it considers appropriate for taking action to further the general biodiversity objective, and
  - (b) take such action as it considers appropriate, in the light of those policies and objectives, to further that objective.
- (1B) The requirements of subsection (1A)(a) may be satisfied (to any extent) by revising any existing policies and specific objectives for taking action to further the general biodiversity objective.
- (1C) The first consideration required by subsection (1) must be completed by the authority within the period of one year beginning with the day on which section 102 of the Environment Act 2021 comes into force.
- (1D) Any subsequent consideration required by subsection (1) must be completed no more than five years after the completion of the authority’s previous consideration.
- (1E) A determination required by subsection (1A)(a) must be made as soon as practicable after the completion of the consideration to which it relates.
- (1F) Nothing in this section prevents the authority from—

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- (a) determining or revising policies and specific objectives at any time, or
  - (b) taking action to further the general biodiversity objective at any time.”
- (4) In subsection (2) for “subsection (1)” substitute “subsections (1) and (1A)”.
- (5) After subsection (2) insert—
- “(2A) In complying with subsections (1) and (1A) the authority must in particular have regard to—
- (a) any relevant local nature recovery strategy, and
  - (b) any relevant species conservation strategy or protected site strategy prepared by Natural England.
- (2B) The Secretary of State must issue guidance to local planning authorities as to how they are to comply with their duty under subsection (2A)(a) when complying with subsections (1) and (1A) in their capacity as such authorities.
- (2C) Guidance under subsection (2B) must be—
- (a) published by the Secretary of State in such manner as the Secretary of State thinks fit,
  - (b) kept under review, and
  - (c) revised where the Secretary of State considers it appropriate.
- (2D) The first guidance under subsection (2B) must be published by the Secretary of State within the period of two years beginning with the day on which section 102 of the Environment Act 2021 comes into force.”
- (6) For subsection (3) substitute—
- “(3) The action which may be taken by the authority to further the general biodiversity objective includes, in particular, action taken for the purpose of—
- (a) conserving, restoring or otherwise enhancing a population of a particular species, and
  - (b) conserving, restoring or otherwise enhancing a particular type of habitat.”
- (7) After subsection (5) insert—
- “(6) This section has effect in relation to Her Majesty’s Revenue and Customs with the following modifications—
- (a) the omission from subsection (A1) of the words “in England” and “in relation to England”;
  - (b) the omission from subsection (1) of the words from “which” to “England”.
- (7) In this section references to England include the territorial sea adjacent to England.”
- (8) In section 41 of that Act (biodiversity lists and action (England))—
- (a) in subsection (1), after “conserving” insert “or enhancing”;
  - (b) in subsection (3) for “and (2)” substitute “and (1A)”.



### 103 Biodiversity reports

(1) After section 40 of the Natural Environment and Rural Communities Act 2006 insert—

#### “40A Biodiversity reports

- (1) This section applies to—
  - (a) a local authority in England other than a parish council,
  - (b) a local planning authority in England, and
  - (c) a designated authority (see subsection (8)(a)).
- (2) A public authority to which this section applies (“the authority”) must publish biodiversity reports in accordance with this section.
- (3) A biodiversity report so published must contain—
  - (a) a summary of the action which the authority has taken over the period covered by the report for the purpose of complying with its duties under section 40(1) and (1A),
  - (b) a summary of the authority’s plans for complying with those duties over the period of five years following the period covered by the report,
  - (c) any quantitative data required to be included in the report by regulations under subsection (8)(b), and
  - (d) any other information that the authority considers it appropriate to include in the report.
- (4) If the authority is a local planning authority, its biodiversity report must also contain—
  - (a) a summary of the action taken by the authority in carrying out its functions under Schedule 7A to the Town and Country Planning Act 1990 (biodiversity gain as condition of planning permission) over the period covered by the report,
  - (b) information about any biodiversity gains resulting or expected to result from biodiversity gain plans approved by the authority during that period, and
  - (c) a summary of the authority’s plans for carrying out those functions over the five year period following the period covered by the report.
- (5) A biodiversity report—
  - (a) must specify the period covered by the report, and
  - (b) must be published within the period of 12 weeks following the last day of that period.
- (6) The authority’s first biodiversity report must cover a period chosen by the authority which—
  - (a) is no longer than three years, and
  - (b) begins with the day on which the authority first becomes subject to the duty under subsection (2).
- (7) A subsequent biodiversity report made by the authority must cover a period chosen by the authority which—
  - (a) is no longer than five years, and

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- (b) begins with the day after the last day of the period covered by its most recent biodiversity report.
- (8) The Secretary of State may by regulations—
  - (a) provide for specified public authorities, or public authorities of a specified description, to be designated authorities for the purposes of this section;
  - (b) require biodiversity reports to include specified quantitative data relating to biodiversity in any area of land in England in relation to which the authority exercises any functions.

In this subsection “specified” means specified in the regulations.

- (9) Public authorities with no functions exercisable in relation to England may not be designated under subsection (8)(a).
- (10) The power to make regulations under subsection (8) is exercisable by statutory instrument.
- (11) A statutory instrument containing regulations under subsection (8) is subject to annulment in pursuance of a resolution of either House of Parliament.
- (12) Terms used in this section and section 40 have the same meaning as in that section.”

#### *Local nature recovery strategies*

### **104 Local nature recovery strategies for England**

- (1) There are to be local nature recovery strategies for areas in England.
- (2) Together the local nature recovery strategies are to cover the whole of England.
- (3) The Secretary of State is to determine the areas within England to which individual local nature recovery strategies are to relate.
- (4) The area of a local authority, other than a county council, may not be split between local nature recovery strategies.
- (5) Section 40(2A) of the Natural Environment and Rural Communities Act 2006 (duty to conserve biodiversity) makes provision about the duties of public authorities in relation to local nature recovery strategies.

### **105 Preparation of local nature recovery strategies**

- (1) A local nature recovery strategy for an area (“the strategy area”) is to be prepared and published by the responsible authority.
- (2) The responsible authority for a local nature recovery strategy is such one of the following authorities as is appointed by the Secretary of State—
  - (a) a local authority whose area is, or is within, the strategy area;
  - (b) the Mayor of London;
  - (c) the mayor for the area of a combined authority established under section 103 of the Local Democracy, Economic Development and Construction Act 2009;

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- (d) a National Park authority in England;
  - (e) the Broads Authority;
  - (f) Natural England.
- (3) A local nature recovery strategy is to be reviewed and republished from time to time by the responsible authority.
- (4) The Secretary of State may by regulations make provision about the procedure to be followed in the preparation and publication, and review and republication, of local nature recovery strategies.
- (5) Regulations under this section may, for example, include provision—
- (a) requiring the provision of information by a local authority whose area is, or is within, the strategy area but which is not the responsible authority;
  - (b) for a local nature recovery strategy to be agreed by all of the local authorities whose areas are within the strategy area;
  - (c) for the procedure for reaching such agreement and for the resolution of disagreements (including resolution by the Secretary of State or by a public inquiry);
  - (d) for consultation, including consultation of members of the public;
  - (e) for the times at or after which a local nature recovery strategy is to be reviewed and republished.
- (6) Regulations under this section are subject to the negative procedure.

## **106 Content of local nature recovery strategies**

- (1) A local nature recovery strategy relating to an area (“the strategy area”) is to include—
- (a) a statement of biodiversity priorities for the strategy area, and
  - (b) a local habitat map for the whole strategy area or two or more local habitat maps which together cover the whole strategy area.
- (2) The statement of biodiversity priorities referred to in subsection (1)(a) is to include—
- (a) a description of the strategy area and its biodiversity,
  - (b) a description of the opportunities for recovering or enhancing biodiversity, in terms of habitats and species, in the strategy area,
  - (c) the priorities, in terms of habitats and species, for recovering or enhancing biodiversity (taking into account the contribution that recovering or enhancing biodiversity can also make to other environmental benefits), and
  - (d) proposals as to potential measures relating to those priorities.
- (3) A local habitat map referred to in subsection (1)(b) is a map identifying—
- (a) national conservation sites in the strategy area,
  - (b) any nature reserves in the strategy area provided under section 21 of the National Parks and Access to the Countryside Act 1949, and
  - (c) other areas in the strategy area which in the opinion of the responsible authority—
    - (i) are, or could become, of particular importance for biodiversity, or
    - (ii) are areas where the recovery or enhancement of biodiversity could make a particular contribution to other environmental benefits.

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- (4) A local habitat map which does not relate to the whole of the strategy area must relate to the area of one or more local authorities within the strategy area.
- (5) The Secretary of State may issue guidance as to—
  - (a) information to be included in a local nature recovery strategy pursuant to the requirements in subsections (1) to (3), and
  - (b) any other matters to be included in a local nature recovery strategy.
- (6) A responsible authority must have regard to the guidance when preparing a local nature recovery strategy.
- (7) The Secretary of State must lay before Parliament, and publish, the guidance.

### **107 Information to be provided by the Secretary of State**

- (1) For the purpose of assisting responsible authorities in their preparation of local nature recovery strategies, the Secretary of State must prepare and publish a national habitat map for England.
- (2) The national habitat map must in particular identify—
  - (a) national conservation sites, and
  - (b) other areas that in the opinion of the Secretary of State are of particular importance for biodiversity.
- (3) The Secretary of State may from time to time review and republish the national habitat map.
- (4) The Secretary of State must inform a responsible authority of any area in the authority's strategy area which falls within subsection (5).
- (5) An area falls within this subsection if in the Secretary of State's opinion—
  - (a) the area could be of greater importance for biodiversity, or is an area where the recovery or enhancement of biodiversity could make a contribution to other environmental benefits, and
  - (b) the area could contribute to the establishment of a network of areas across England for the recovery and enhancement of biodiversity in England as a whole.
- (6) The Secretary of State must provide a responsible authority with any other information—
  - (a) that is held by the Secretary of State, and
  - (b) that the Secretary of State considers might assist the authority in preparing a local nature recovery strategy.

### **108 Interpretation**

- (1) This section has effect for the purposes of sections 104 to 107.
- (2) "Local authority" means—
  - (a) a county or district council in England;
  - (b) a London borough council;
  - (c) the Common Council of the City of London;
  - (d) the Council of the Isles of Scilly.

- (3) “National conservation site” means—
- (a) a site of special scientific interest, within the meaning of Part 2 of the Wildlife and Countryside Act 1981;
  - (b) a national nature reserve declared in accordance with section 35 of that Act;
  - (c) a Ramsar site, within the meaning of section 37A of that Act;
  - (d) a marine conservation zone designated under section 116 of the Marine and Coastal Access Act 2009;
  - (e) a European site, within the meaning of regulation 8 of the Conservation of Habitats and Species Regulations 2017 ([S.I. 2017/1012](#)).

### *Conservation*

#### **109 Species conservation strategies**

- (1) Natural England may prepare and publish a strategy for improving the conservation status of any species of fauna or flora.
- (2) A strategy under subsection (1) is called a “species conservation strategy”.
- (3) A species conservation strategy must relate to an area (the “strategy area”) consisting of—
- (a) England, or
  - (b) any part of England.
- (4) A species conservation strategy for a species may in particular—
- (a) identify areas or features in the strategy area which are of importance to the conservation of the species,
  - (b) identify priorities in relation to the creation or enhancement of habitat for the purpose of improving the conservation status of the species in the strategy area,
  - (c) set out how Natural England proposes to exercise its functions in relation to the species across the whole of the strategy area or in any part of it for the purpose of improving the conservation status of the species in the strategy area,
  - (d) include Natural England’s opinion on the giving by any other public authority of consents or approvals which might affect the conservation status of the species in the strategy area, and
  - (e) include Natural England’s opinion on measures that it would be appropriate to take to avoid, mitigate or compensate for any adverse impact on the conservation status of the species in the strategy area that may arise from a plan, project or other activity.
- (5) Natural England may, from time to time, amend a species conservation strategy.
- (6) A local planning authority in England and any prescribed authority must co-operate with Natural England in the preparation and implementation of a species conservation strategy so far as relevant to the authority’s functions.
- (7) The Secretary of State may give guidance to local planning authorities in England and to prescribed authorities as to how to discharge the duty in subsection (6).
- (8) The Secretary of State must lay before Parliament, and publish, the guidance.

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*Status: This is the original version (as it was originally enacted).*

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- (9) A local planning authority in England and any prescribed authority must in the exercise of its functions have regard to a species conservation strategy so far as relevant to its functions.
- (10) In this section—
- “England” includes the territorial sea adjacent to England, which for this purpose does not include—
- (a) any part of the territorial sea adjacent to Wales for the general or residual purposes of the Government of Wales Act 2006 (see section 158 of that Act), or
- (b) any part of the territorial sea adjacent to Scotland for the general or residual purposes of the Scotland Act 1998 (see section 126 of that Act);
- “local planning authority” means a person who is a local planning authority for the purposes of any provision of Part 3 of the Town and Country Planning Act 1990;
- “prescribed authority” means an authority exercising functions of a public nature in England which is specified for the purposes of this section by regulations made by the Secretary of State.
- (11) Regulations under subsection (10) are subject to the negative procedure.

## **110 Protected site strategies**

- (1) Natural England may prepare and publish a strategy for—
- (a) improving the conservation and management of a protected site, and
- (b) managing the impact of plans, projects or other activities (wherever undertaken) on the conservation and management of the protected site.
- (2) A strategy under subsection (1) is called a “protected site strategy”.
- (3) A “protected site” means—
- (a) a European site,
- (b) a site of special scientific interest, or
- (c) a marine conservation zone,
- to the extent the site or zone is within England.
- (4) A protected site strategy for a protected site may in particular—
- (a) include an assessment of the impact that any plan, project or other activity may have on the conservation or management of the protected site (whether assessed individually or cumulatively with other activities),
- (b) include Natural England’s opinion on measures that it would be appropriate to take to avoid, mitigate or compensate for any adverse impact on the conservation or management of the protected site that may arise from a plan, project or other activity,
- (c) identify any plan, project or other activity that Natural England considers is necessary for the purposes of the conservation or management of the protected site, and
- (d) cover any other matter which Natural England considers is relevant to the conservation or management of the protected site.

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*Status: This is the original version (as it was originally enacted).*

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- (5) In preparing a protected site strategy for a protected site, Natural England must consult—
- (a) any local planning authority in England which exercises functions in respect of an area—
    - (i) within which any part of the protected site is located, or
    - (ii) within which a plan, project or other activity that Natural England considers may have an adverse impact on the conservation or management of the protected site is being, or is proposed to be, undertaken,
  - (b) any public authority in England—
    - (i) that is undertaking, or proposing to undertake, a plan, project or other activity that Natural England considers may have an adverse impact on the conservation or management of the protected site,
    - (ii) the consent or approval of which is required in respect of a plan, project or other activity that Natural England considers may have an adverse impact on the conservation or management of the protected site, or
    - (iii) that Natural England considers may otherwise be affected by the strategy,
  - (c) any IFC authority in England which exercises functions in respect of an area—
    - (i) the conservation or management of which Natural England considers may be affected by the strategy, or
    - (ii) the sea fisheries resources of which Natural England considers may be affected by the strategy,
  - (d) the Marine Management Organisation, where—
    - (i) any part of the protected site is within the MMO’s area, or
    - (ii) Natural England considers any part of the MMO’s area may otherwise be affected by the strategy,
  - (e) the Environment Agency,
  - (f) the Secretary of State, and
  - (g) any other person that Natural England considers should be consulted in respect of the strategy, including the general public or any section of it.
- (6) In subsections (4) and (5), a reference to an adverse impact on the conservation or management of a protected site includes—
- (a) in relation to a European site, anything which adversely affects the integrity of the site,
  - (b) in relation to a site of special scientific interest, anything which is likely to adversely affect the flora, fauna or geological or physiographical features by reason of which the site is of special interest,
  - (c) in relation to a marine conservation zone, anything which hinders the conservation objectives stated for the zone pursuant to section 117(2) of the Marine and Coastal Access Act 2009, and
  - (d) any other thing which causes deterioration of natural habitats and the habitats of species as well as disturbance of the species in the protected site, in so far as such disturbance could be significant in relation to the conservation or management of the protected site.

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- (7) A person whom Natural England consults under subsection (5)(a) to (e) must cooperate with Natural England in the preparation of a protected site strategy so far as relevant to the person’s functions.
- (8) The Secretary of State may give guidance as to how to discharge the duty in subsection (7).
- (9) The Secretary of State must lay before Parliament, and publish, the guidance.
- (10) A person must have regard to a protected site strategy so far as relevant to any duty which the person has under—
  - (a) the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012),
  - (b) sections 28G to 28I of the Wildlife and Countryside Act 1981, or
  - (c) sections 125 to 128 of the Marine and Coastal Access Act 2009.
- (11) Natural England may, from time to time, amend a protected site strategy.
- (12) The duty to consult a person under subsection (5) also applies when Natural England amends a protected site strategy under subsection (11) so far as the amendment is relevant to the person’s functions.
- (13) In this section—
  - “England” has the meaning given in section 109;
  - “European site” has the meaning given in regulation 8 of the Conservation of Habitats and Species Regulations 2017;
  - “IFC authority” means an inshore fisheries and conservation authority created under section 150 of the Marine and Coastal Access Act 2009;
  - “local planning authority” has the meaning given in section 109;
  - “marine conservation zone” means an area designated as a marine conservation zone under section 116(1) of the Marine and Coastal Access Act 2009;
  - “MMO’s area” has the meaning given in section 2(12) of the Marine and Coastal Access Act 2009;
  - “public authority” has the meaning given in section 40(4) of the Natural Environment and Rural Communities Act 2006;
  - “sea fisheries resources” has the meaning given in section 153(10) of the Marine and Coastal Access Act 2009;
  - “site of special scientific interest” means an area notified under section 28(1) of the Wildlife and Countryside Act 1981.

## **111 Wildlife conservation: licences**

- (1) In section 10 of the Wildlife and Countryside Act 1981 (exceptions to section 9 of that Act), in subsection (1)—
  - (a) in paragraph (a), omit the final “or”;
  - (b) at the end insert “or
  - (c) anything done in relation to an animal of any species pursuant to a licence granted by Natural England under regulation 55 of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012) in respect of an animal or animals of that species”.



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- (2) In section 16 of that Act (power to grant licences), in subsection (3)—
  - (a) in paragraph (h), omit the final “or”;
  - (b) at the end insert “or
    - (j) in England, for reasons of overriding public interest”.”
- (3) In that section, after subsection (3A) insert—

“(3B) In England, the appropriate authority shall not grant a licence under subsection (3) unless it is satisfied—

  - (a) that there is no other satisfactory solution, and
  - (b) that the grant of the licence is not detrimental to the survival of any population of the species of animal or plant to which the licence relates.”
- (4) In that section, in subsections (5A)(c) and (6)(b), after “two years,” insert “or in the case of a licence granted by Natural England five years,”.
- (5) In that section, in subsection (9)(c), after “to (e)” insert “or (j)”.
- (6) In the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012), in regulation 55(10), for “two years” substitute—
  - (a) five years, in the case of a licence granted by Natural England, or
  - (b) two years, in any other case.”

### *Habitats Regulations*

#### **112 Habitats Regulations: power to amend general duties**

- (1) The Secretary of State may by regulations amend the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012) (the “Habitats Regulations”), as they apply in relation to England, for the purposes in subsection (2).
- (2) The purposes are—
  - (a) to require persons within regulation 9(1) of the Habitats Regulations to exercise functions to which that regulation applies—
    - (i) to comply with requirements imposed by regulations under this section, or
    - (ii) to further objectives specified in regulations under this section, instead of exercising them to secure compliance with the requirements of the Directives;
  - (b) to require persons within regulation 9(3) of the Habitats Regulations, when exercising functions to which that regulation applies, to have regard to matters specified by regulations under this section instead of the requirements of the Directives.
- (3) The regulations may impose requirements, or specify objectives or matters, relating to—
  - (a) targets in respect of biodiversity set by regulations under section 1 or 3;
  - (b) improvements to the natural environment which relate to biodiversity and are set out in an environmental improvement plan.

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- (4) The regulations may impose any other requirements, or specify any other objectives or matters, relating to the conservation or enhancement of biodiversity that the Secretary of State considers appropriate.
- (5) Regulations under this section may also, in connection with provision made for the purposes in subsection (2), amend other provisions of the Habitats Regulations, as they apply in relation to England, which refer to requirements, objectives or provisions of the Directives.
- (6) In making regulations under this section the Secretary of State must have regard to the particular importance of furthering the conservation and enhancement of biodiversity.
- (7) The Secretary of State may make regulations under this section only if satisfied that the regulations do not reduce the level of environmental protection provided by the Habitats Regulations.
- (8) Before making regulations under this section the Secretary of State must lay before Parliament, and publish, a statement explaining why the Secretary of State is satisfied as mentioned in subsection (7).
- (9) Before making regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (10) Regulations under this section may not come into force before 1 February 2023.
- (11) In this section—
  - “the Directives” has the same meaning as in the Habitats Regulations (see regulation 3(1));
  - “England” includes the territorial sea adjacent to England, which for this purpose does not include—
    - (a) any part of the territorial sea adjacent to Wales for the general or residual purposes of the Government of Wales Act 2006 (see section 158 of that Act), or
    - (b) any part of the territorial sea adjacent to Scotland for the general or residual purposes of the Scotland Act 1998 (see section 126 of that Act);
  - “environmental improvement plan” has the same meaning as in Part 1.
- (12) Regulations under this section are subject to the affirmative procedure.

### **113 Habitats Regulations: power to amend Part 6**

- (1) The Secretary of State may by regulations amend Part 6 of the Conservation of Habitats and Species Regulations 2017 (S.I. 2017/1012) (the “Habitats Regulations”) (assessment of plans and projects) as they apply in relation to England.
- (2) In making regulations under this section the Secretary of State must have regard to the particular importance of furthering the conservation and enhancement of biodiversity.
- (3) The Secretary of State may make regulations under this section only if satisfied that the regulations do not reduce the level of environmental protection provided by the Habitats Regulations.
- (4) Before making regulations under this section the Secretary of State must lay before Parliament, and publish, a statement explaining why the Secretary of State is satisfied as mentioned in subsection (3).

- (5) Before making regulations under this section the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (6) In this section “England” has the same meaning as in section 112.
- (7) Regulations under this section are subject to the affirmative procedure.

### *Tree felling and planting*

#### **114 Controlling the felling of trees in England**

Schedule 16 makes amendments to Part 2 of the Forestry Act 1967 in relation to the enforcement of the power to control the felling of trees in England.

#### **115 Local highway authorities in England to consult before felling street trees**

After section 96 of the Highways Act 1980 insert—

##### **“96A Duty of local highway authorities in England to consult before felling street trees**

- (1) A local highway authority in England must consult members of the public before felling a tree on an urban road (a “street tree”).
- (2) A local highway authority must have regard to any guidance given by the Secretary of State to local highway authorities about how to discharge the duty under subsection (1).
- (3) The duty under subsection (1) does not apply in a case where—
  - (a) the street tree has a diameter not exceeding 8 centimetres (measured over the bark, at a point 1.3 metres above ground level),
  - (b) the authority considers that the street tree is dead,
  - (c) the authority considers that the street tree is required to be felled—
    - (i) by virtue of an order under the Plant Health Act 1967, or
    - (ii) under any enactment on the basis that the tree is dangerous,
  - (d) the authority considers that the street tree is required to be felled in order to comply with—
    - (i) a duty to make reasonable adjustments in the Equality Act 2010 because the tree is causing an obstruction (see section 20 of that Act), or
    - (ii) a duty in section 29 of that Act (prohibitions on discrimination etc in the provision of services) because the tree is causing an obstruction, or
  - (e) the felling of the street tree is required for the purpose of carrying out development authorised by—
    - (i) planning permission granted under section 70, 73, 76D, 77 or 79 of the Town and Country Planning Act 1990, or
    - (ii) outline planning permission granted under section 92 of that Act.

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- (4) In subsection (1) “urban road” means a highway, other than a trunk road or classified road, which—
- (a) is a restricted road for the purposes of section 81 of the Road Traffic Regulation Act 1984 (30 miles per hour speed limit),
  - (b) is subject to an order made by virtue of section 84(1)(a) of that Act imposing a speed limit not exceeding 40 miles per hour, or
  - (c) is otherwise a street in an urban area.”

*Use of forest risk commodities in commercial activity*

**116 Use of forest risk commodities in commercial activity**

- (1) In Schedule 17—
- (a) Part 1 makes provision about the use of forest risk commodities in commercial activity,
  - (b) Part 2 makes provision about enforcement, and
  - (c) Part 3 contains general provisions.
- (2) Regulations under the following provisions of Schedule 17 are subject to the affirmative procedure—
- (a) paragraph 1;
  - (b) paragraph 2(4)(c);
  - (c) paragraph 5 (except for paragraph 5(2)(b) and (5));
  - (d) paragraph 7;
  - (e) Part 2.
- (3) Regulations under the following provisions of Schedule 17 are subject to the negative procedure—
- (a) paragraph 3;
  - (b) paragraph 4;
  - (c) paragraph 5(2)(b) and (5).

**PART 7**

CONSERVATION COVENANTS

*Creation of conservation covenant*

**117 Conservation covenant agreements**

- (1) For the purposes of this Part, a “conservation covenant agreement” is an agreement between a landowner and a responsible body where—
- (a) the agreement contains provision which—
    - (i) is of a qualifying kind,
    - (ii) has a conservation purpose, and
    - (iii) is intended by the parties to be for the public good,

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- (b) it appears from the agreement that the parties intend to create a conservation covenant, and
  - (c) the agreement is executed as a deed by the parties.
- (2) The reference in subsection (1)(a) to provision of a qualifying kind is to provision—
- (a) requiring the landowner—
    - (i) to do, or not to do, something on land in England specified in the provision in relation to which the landowner holds a qualifying estate specified in the agreement for the purposes of the provision, or
    - (ii) to allow the responsible body to do something on such land, or
  - (b) requiring the responsible body to do something on such land.
- (3) For the purposes of subsection (1)(a)(ii), provision has a conservation purpose if its purpose is—
- (a) to conserve the natural environment of land or the natural resources of land,
  - (b) to conserve land as a place of archaeological, architectural, artistic, cultural or historic interest, or
  - (c) to conserve the setting of land with a natural environment or natural resources or which is a place of archaeological, architectural, artistic, cultural or historic interest.
- (4) In this Part—
- a reference to conserving something includes a reference to protecting, restoring or enhancing it;
  - “qualifying estate” means—
    - (a) an estate in fee simple absolute in possession, or
    - (b) a term of years absolute granted for a term of more than seven years from the date of the grant and in the case of which some part of the period for which the term of years was granted remains unexpired;
  - a reference to “the qualifying estate”, in relation to an obligation under a conservation covenant, is to the estate in land by virtue of which the condition in subsection (1)(a)(i) was met in relation to—
    - (a) if the obligation is not an ancillary obligation, the provision giving rise to the obligation, or
    - (b) if the obligation is an ancillary obligation, the provision giving rise to the obligation to which it was ancillary;
  - (and for this purpose “ancillary obligation” means an obligation under provision falling within section 118(2)(b));
  - “natural environment”, in relation to land, includes—
    - (a) its plants, animals and other living organisms;
    - (b) their habitats;
    - (c) its geological features.

## **118 Conservation covenants**

- (1) A conservation covenant is so much of a conservation covenant agreement as is given statutory effect by this section.
- (2) The following provisions of a conservation covenant agreement have statutory effect as a conservation covenant—

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- (a) provisions in respect of which the conditions in section 117(1)(a) are met, and
  - (b) provisions ancillary to any provision falling within paragraph (a).
- (3) If the agreement includes provision for public access to land to which other provision of the agreement (being provision which meets the conditions in section 117(1)(a)) relates, the provision for public access is to be treated as ancillary to that other provision.
- (4) In this Part—
- (a) references to an obligation under a conservation covenant are to an obligation of the landowner or the responsible body given statutory effect by this section as part of the conservation covenant, and
  - (b) references to the land to which an obligation under a conservation covenant relates are, in the case of an obligation given statutory effect by this section by virtue of being ancillary to another provision, to the land to which the obligation under the other provision relates.

## **119 Responsible bodies**

- (1) The following are responsible bodies for the purposes of this Part—
- (a) the Secretary of State;
  - (b) bodies which are designated under this section (referred to in this Part as “designated bodies”).
- (2) The Secretary of State may, on the application of a local authority or other body, designate it as a responsible body for the purposes of this Part.
- (3) The Secretary of State may only designate a local authority if satisfied that it is suitable to be a responsible body.
- (4) The Secretary of State may only designate a body that is not a local authority if satisfied that it—
- (a) meets the condition in subsection (5), and
  - (b) is suitable to be a responsible body.
- (5) The condition is that—
- (a) in the case of a public body or a charity, at least some of its main purposes or functions relate to conservation, or
  - (b) in any other case, at least some of the body’s main activities relate to conservation.
- (6) The Secretary of State may revoke a designation by notice to the body concerned if—
- (a) the body has applied to the Secretary of State for its designation to be revoked,
  - (b) the Secretary of State is satisfied that the body is not suitable to remain as a responsible body, or
  - (c) in the case of a body other than a local authority, the Secretary of State is satisfied that the body does not meet the condition in subsection (5).
- (7) The Secretary of State may determine the criteria to be applied in deciding whether a body is suitable to be or to remain a responsible body (which may include criteria relating to the body’s connection with the United Kingdom).
- (8) The Secretary of State must publish (and keep up to date)—

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- (a) a document setting out the criteria applicable for the purposes mentioned in subsection (7), and
  - (b) a list of the bodies who are designated under this section.
- (9) In this section—
- “charity” means a charity registered under the Charities Act 2011 or an exempt charity (within the meaning of that Act);
  - “conservation” means conservation of—
    - (a) the natural environment or natural resources of land,
    - (b) places of archaeological, architectural, artistic, cultural or historic interest, or
    - (c) the setting of land with a natural environment or natural resources or which is a place of archaeological, architectural, artistic, cultural or historic interest;
  - “local authority” means—
    - (a) a county or district council in England;
    - (b) a London borough council;
    - (c) the Common Council of the City of London;
    - (d) the Council of the Isles of Scilly.

#### *Effect of conservation covenant*

### **120 Local land charge**

- (1) A conservation covenant is a local land charge.
- (2) For the purposes of the Local Land Charges Act 1975 the originating authority, as respects a conservation covenant, is the person by whom an obligation of the landowner under the covenant is enforceable.
- (3) In section 2 of the Local Land Charges Act 1975 (matters which are not local land charges), the references in paragraphs (a) and (b) to a covenant or agreement made between a lessor and a lessee do not include a conservation covenant.
- (4) In its application to a conservation covenant, section 10(1) of the Local Land Charges Act 1975 (compensation for non-registration or defective official search certificate) has effect as if—
  - (a) in the words preceding paragraph (a), the words from the beginning to “but” were omitted,
  - (b) paragraph (a) (non-registration) were omitted, and
  - (c) in paragraph (b), for the words from “in existence” to the end there were substituted the words “registered in that register at the time of the search but was not shown by the official search certificate as so registered”.

### **121 Duration of obligation under conservation covenant**

- (1) An obligation under a conservation covenant has effect for the default period, unless the covenant provides for a shorter period.
- (2) The default period for the purposes of subsection (1) is—

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- (a) if the qualifying estate in relation to the obligation is an estate in fee simple absolute in possession, a period of indefinite duration, and
- (b) if the qualifying estate in relation to the obligation is a term of years absolute, a period corresponding in length to the remainder of the period for which the term of years was granted.

## **122 Benefit and burden of obligation of landowner**

- (1) An obligation of the landowner under a conservation covenant is owed to the responsible body under the covenant.
- (2) Subject to the following provisions, an obligation of the landowner under a conservation covenant binds—
  - (a) the landowner under the covenant, and
  - (b) any person who becomes a successor of the landowner under the covenant.
- (3) In subsection (2)(b) “successor” (in relation to the landowner under the covenant) means a person who holds, in respect of any of the land to which the obligation relates—
  - (a) the qualifying estate, or
  - (b) an estate in land derived (whether immediately or otherwise) from the qualifying estate after the creation of the covenant.
- (4) An obligation of the landowner under a conservation covenant ceases to bind the landowner under the covenant, or a person who becomes a successor of that landowner, in respect of—
  - (a) land which ceases to be land to which the obligation relates,
  - (b) in the case of the landowner under the covenant, land in relation to which the landowner ceases to be the holder of the qualifying estate, or
  - (c) in the case of a successor, land in relation to which the successor ceases to be the holder of the qualifying estate or of the estate derived from the qualifying estate, as the case may be.
- (5) Subsection (2)(b) does not apply if—
  - (a) the obligation is positive and the person becomes a successor by virtue of holding a term of years absolute granted for a term of seven years or less from the date of the grant,
  - (b) the conservation covenant was not registered in the local land charges register at the time when the successor acquired the estate in land concerned, or
  - (c) the successor’s immediate predecessor was not bound by the obligation in respect of the land to which the successor’s interest relates.
- (6) In the case of a conservation covenant relating to land in an area in relation to which section 3 of the Local Land Charges Act 1975 (as substituted by paragraph 3 of Schedule 5 to the Infrastructure Act 2015) does not yet have effect, the reference in subsection (5)(b) to the local land charges register is to the appropriate local land charges register.
- (7) The reference in subsection (5)(b) to the time when the successor acquired the estate in land concerned is, if the successor acquired that interest under a disposition which took effect at law only when registered in the register of title kept under the Land Registration Act 2002, to be read as a reference to the time when the disposition was made.



- (8) In subsection (5)(c) the successor’s “immediate predecessor” is, unless subsection (9) applies, the successor’s immediate predecessor in title.
- (9) If the successor is the first holder of an estate in land which is derived from another estate in land (whether the other estate is the qualifying estate or an estate derived, immediately or otherwise, from it) the successor’s immediate predecessor is the holder of that other estate when the derived estate was created.

### **123 Benefit of obligation of responsible body**

- (1) Subject to the following provisions, an obligation of the responsible body under a conservation covenant is owed—
  - (a) to the landowner under the covenant, and
  - (b) to any person who becomes a successor of the landowner under the covenant.
- (2) In this section “successor” (in relation to the landowner under the covenant) means a person who holds, in respect of any of the land to which the obligation relates—
  - (a) the qualifying estate, or
  - (b) an estate in land derived (whether immediately or otherwise) from the qualifying estate after the creation of the covenant.
- (3) An obligation of the responsible body under a conservation covenant ceases to be owed to the landowner under the covenant, or to a person who becomes a successor of that landowner, in respect of—
  - (a) land which ceases to be land to which the obligation relates,
  - (b) in the case of the landowner under the covenant, land in relation to which the landowner ceases to be the holder of the qualifying estate, or
  - (c) in the case of a successor, land in relation to which the successor ceases to be the holder of the qualifying estate or of the estate derived from the qualifying estate, as the case may be.
- (4) Subsection (1)(b) does not apply if the obligation is ancillary to an obligation of the landowner under the covenant which does not bind the successor.

#### *Breach and enforcement*

### **124 Breach of obligation**

- (1) A person bound by a negative obligation under a conservation covenant breaches the obligation by—
  - (a) doing something which it prohibits, or
  - (b) permitting or suffering another person to do such a thing.
- (2) A person bound by a positive obligation under a conservation covenant breaches the obligation if it is not performed.

### **125 Enforcement of obligation**

- (1) In proceedings for the enforcement of an obligation under a conservation covenant, the available remedies are—
  - (a) specific performance,

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- (b) injunction,
  - (c) damages, and
  - (d) order for payment of an amount due under the obligation.
- (2) On an application for a remedy under subsection (1)(a) or (b), a court must, in considering what remedy is appropriate, take into account any public interest in the performance of the obligation concerned.
- (3) Subject to subsection (4), contract principles apply to damages for breach of an obligation under a conservation covenant.
- (4) In the case of breach of an obligation of the landowner under a conservation covenant, a court may award exemplary damages in such circumstances as it thinks fit.
- (5) For the purposes of the Limitation Act 1980, an action founded on an obligation under a conservation covenant is to be treated as founded on simple contract.

## **126 Defences to breach of obligation**

- (1) In proceedings for breach of an obligation under a conservation covenant it is a defence to show—
- (a) that the breach occurred as a result of a matter beyond the defendant’s control,
  - (b) that the breach occurred as a result of doing, or not doing, something in an emergency in circumstances where it was necessary for that to be done, or not done, in order to prevent loss of life or injury to any person, or
  - (c) that at the time of the breach—
    - (i) the land to which the obligation relates was, or was within an area, designated for a public purpose, and
    - (ii) compliance with the obligation would have involved a breach of any statutory control applying as a result of the designation.
- (2) If the only reason for the application of subsection (1)(c) was failure to obtain authorisation, the defendant must also show that all reasonable steps to obtain authorisation had been taken.
- (3) The defence under subsection (1)(c) does not apply if the designation was in force when the conservation covenant was created.
- (4) The defence of statutory authority (which applies in relation to the infringement of rights such as easements by a person acting under statutory authority) applies in relation to breach of an obligation under a conservation covenant.
- (5) In this section—
- “authorisation” means any approval, confirmation, consent, licence, permission or other authorisation (however described), whether special or general;
  - “statutory control” means control imposed by provision contained in, or having effect under, an Act.

### *Discharge and modification*

#### **127 Discharge of obligation of landowner by agreement**

- (1) The responsible body under a conservation covenant and a person who holds the qualifying estate in respect of any of the land to which an obligation of the landowner under the covenant relates may, by agreement, discharge from the obligation any of the land in respect of which the person holds that estate.
- (2) Subsection (3) applies to—
  - (a) the responsible body under a conservation covenant, and
  - (b) a person who is a successor of the landowner under the covenant by virtue of holding an estate in land which—
    - (i) is an estate in respect of any of the land to which an obligation of the landowner under the covenant relates, and
    - (ii) is derived (whether immediately or otherwise) from the qualifying estate.
- (3) Those persons may, by agreement, discharge the estate in land mentioned in subsection (2)(b) from the obligation in respect of any of the land to which the obligation relates.
- (4) Any power under this section is exercisable by agreement executed as a deed by the parties which specifies—
  - (a) the obligation to which the discharge relates,
  - (b) the land to which the discharge relates, and
  - (c) the estate in land by virtue of which the power is exercisable.

#### **128 Discharge of obligation of responsible body by agreement**

- (1) A person to whom an obligation of the responsible body under a conservation covenant is owed by virtue of the person holding an estate in land may, by agreement with the responsible body, discharge the obligation, so far as owed in relation to that estate, in respect of any of the land in respect of which the person is entitled to the benefit of the obligation.
- (2) The power under this section is exercisable by agreement executed as a deed by the parties which specifies—
  - (a) the obligation to which the discharge relates,
  - (b) the land to which the discharge relates, and
  - (c) the estate in land by virtue of which the power is exercisable.

#### **129 Modification of obligation by agreement**

- (1) A person bound by, or entitled to the benefit of, an obligation under a conservation covenant may, by agreement with the responsible body under the covenant, modify the obligation in its application to any of the land in respect of which the person is bound by, or entitled to the benefit of, it.
- (2) The power under subsection (1) does not include power to make a change which, had it been included in the original agreement, would have prevented the provision of the

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agreement that gave rise to the obligation being provision in relation to which the conditions in section 117(1) were met.

- (3) The power under this section is exercisable by agreement executed as a deed by the parties which specifies—
  - (a) the obligation to which the modification relates,
  - (b) the land to which the modification relates, and
  - (c) the estate in land by virtue of which the power is exercisable.
- (4) If an obligation under a conservation covenant is modified by an agreement under this section, the modification binds—
  - (a) the parties to the agreement, and
  - (b) any person who, as respects any of the land to which the modification relates, becomes a successor of a person bound by the modification.
- (5) In subsection (4)(b) “successor of a person bound by the modification”, means a person who holds, in respect of any of the land to which the modification relates—
  - (a) the estate held by the person bound by the modification when the modification was agreed, or
  - (b) an estate in land derived (whether immediately or otherwise) from that estate after the modification is agreed.

### **130 Discharge or modification of obligation by Upper Tribunal**

- (1) Schedule 18 makes provision about the discharge or modification of an obligation under a conservation covenant on application to the Upper Tribunal.
- (2) Where any proceedings by action or otherwise are taken to enforce an obligation under a conservation covenant, any person against whom the proceedings are taken may in such proceedings apply to the High Court or the county court for an order giving leave to apply to the Upper Tribunal under Schedule 18 and staying the proceedings in the meantime.
- (3) No application under section 84(1) of the Law of Property Act 1925 (which enables the Upper Tribunal on application to discharge or modify a restriction arising under covenant or otherwise) may be made in relation to an obligation under a conservation covenant.

*Replacement etc of responsible body*

### **131 Power of responsible body to appoint replacement**

- (1) The responsible body under a conservation covenant may appoint another responsible body to be the responsible body under the covenant, unless the covenant otherwise provides.
- (2) The power under subsection (1) is exercisable by agreement executed as a deed by the appointor and appointee.
- (3) In the case of a conservation covenant registered in the local land charges register, an appointment under subsection (1) only has effect if the appointor supplies to the Chief Land Registrar the information necessary to enable the Registrar to amend the registration.

- (4) In the case of a conservation covenant relating to land in an area in relation to which section 3 of the Local Land Charges Act 1975 (as substituted by paragraph 3 of Schedule 5 to the Infrastructure Act 2015) does not yet have effect—
  - (a) the references in subsection (3) to the local land charges register and the Chief Land Registrar are to the appropriate local land charges register and the authority responsible for that register, but
  - (b) subsection (3) does not apply to an appointment by that authority.
- (5) Appointment under subsection (1) has effect to transfer to the appointee—
  - (a) the benefit of every obligation of the landowner under the conservation covenant, and
  - (b) the burden of every obligation of the responsible body under the covenant.
- (6) Appointment under subsection (1) does not have effect to transfer any right or liability in respect of an existing breach of obligation.
- (7) A body appointed under subsection (1) as the responsible body under a conservation covenant must notify its appointment to every person who is bound by an obligation of the landowner under the covenant.

### **132 Body ceasing to be a responsible body**

- (1) Subsections (2) and (3) apply if a body which is the responsible body under a conservation covenant ceases to be a designated body.
- (2) The body ceases to be the responsible body under the conservation covenant.
- (3) The following transfer to the Secretary of State—
  - (a) the benefit of every obligation of the landowner under the covenant, and
  - (b) the burden of every obligation of the responsible body under the covenant.
- (4) Subsection (3) does not have effect to transfer any right or liability in respect of an existing breach of obligation.
- (5) If subsection (3) has effect in relation to a conservation covenant, the Secretary of State becomes custodian of the covenant until—
  - (a) an appointment under section 131(1) by the Secretary of State has effect in relation to the covenant, or
  - (b) the Secretary of State makes an election under subsection (6) in relation to the covenant.
- (6) If custodian of a conservation covenant, the Secretary of State may elect to be the responsible body under the covenant by giving written notice of election to every person who is bound by an obligation of the landowner under the covenant.
- (7) The Secretary of State may, as custodian of a conservation covenant—
  - (a) enforce any obligation of the landowner under the covenant, and
  - (b) exercise in relation to the covenant any power conferred by this Part on the responsible body under the covenant.
- (8) In relation to any period as custodian of a conservation covenant, the Secretary of State has no liability with respect to performance of any obligation of the responsible body under the covenant.

*Miscellaneous*

**133 Effect of acquisition or disposal of affected land by responsible body**

If the responsible body under a conservation covenant acquires an estate in land to which an obligation under the covenant relates (whether an obligation of the landowner or of the responsible body under the covenant)—

- (a) the acquisition does not have effect to extinguish the obligation,
- (b) section 122(2)(b) applies to the body as it would apply to any other person acquiring the estate in land in the same circumstances, and
- (c) any obligation of the responsible body under the covenant continues to bind the body in accordance with this Part.

**134 Effect of deemed surrender and re-grant of qualifying estate**

- (1) Subsection (2) applies if a term of years absolute which is the qualifying estate in relation to an obligation under a conservation covenant is deemed to be surrendered and re-granted by operation of law.
- (2) In the application of sections 122, 123 and 127 to the period after the deemed surrender, references to the qualifying estate are to be read as including a reference to the term of years deemed to be granted.

**135 Declarations about obligations under conservation covenants**

- (1) The court or Upper Tribunal may on the application of any person interested declare—
  - (a) whether anything purporting to be a conservation covenant is a conservation covenant,
  - (b) whether any land is land to which an obligation under a conservation covenant relates,
  - (c) whether any person is bound by, or entitled to the benefit of, an obligation under a conservation covenant and, if so, in respect of what land,
  - (d) what, upon the true construction of any instrument by means of which an obligation under a conservation covenant is created or modified, is the nature of the obligation.
- (2) No application under section 84(2) of the Law of Property Act 1925 (which enables the court on application to make declarations about restrictions under instruments) may be made in relation to an obligation under a conservation covenant.
- (3) In this section “the court” means the High Court or the county court.

**136 Duty of responsible bodies to make annual return**

- (1) A designated body must make an annual return to the Secretary of State stating whether, during the period to which the return relates, there were any conservation covenants under which an obligation was owed to it as the responsible body.
- (2) If there were any such conservation covenants, the annual return must—
  - (a) state the number of conservation covenants;
  - (b) state, for each conservation covenant, the area of the land in relation to which the body was owed any obligation as the responsible body.

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- (3) The annual return must also give any information that is prescribed under subsection (4).
- (4) The Secretary of State may by regulations make provision about annual returns to be made by a designated body.
- (5) The provision which may be made under subsection (4) includes, in particular, provision—
  - (a) prescribing information to be included in an annual return (but see subsection (10)), and
  - (b) provision as to the period to which an annual return is to relate and the date by which an annual return is to be made.
- (6) Subject to any provision made as mentioned in subsection (5)(b)—
  - (a) the period to which an annual return is to relate, and
  - (b) the date by which an annual return is to be made,are such period and date as the Secretary of State may direct.
- (7) On giving a direction under subsection (6) the Secretary of State must take all reasonable steps to draw the direction to the attention of each responsible body affected by it.
- (8) A direction under subsection (6) may be varied or revoked by a further such direction.
- (9) Regulations under subsection (4) and directions under subsection (6) may make—
  - (a) provision of general application, or
  - (b) provision applicable only to one or more particular responsible bodies or to responsible bodies of a particular description.
- (10) Any information prescribed for inclusion in an annual return made by a designated body must be information about or connected with—
  - (a) the designated body;
  - (b) its activities over the period to which the return relates;
  - (c) any conservation covenant under which an obligation was owed to it as the responsible body during that period;
  - (d) the land in relation to which it was owed such an obligation.
- (11) Regulations under this section are subject to the negative procedure.

### *Supplementary*

#### **137 Crown application**

Schedule 19 makes provision about the application of this Part to Crown land.

#### **138 Index of defined terms in Part 7**

The following Table sets out expressions defined or explained in this Part for general purposes.

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<i>Expression</i>	<i>Provision</i>
conservation covenant	section 118(1)
conservation covenant agreement	section 117(1)
conservation purpose	section 117(3)
conserving (something)	section 117(4)
designated body	section 119(1)(b)
natural environment (in relation to land)	section 117(4)
qualifying estate (generally)	section 117(4)
the qualifying estate (in relation to an obligation under a conservation covenant)	section 117(4)
responsible body	section 119

### **139 Consequential amendments relating to Part 7**

Schedule 20 makes consequential amendments relating to this Part.

## **PART 8**

### MISCELLANEOUS AND GENERAL PROVISIONS

#### *Regulation of chemicals*

### **140 Amendment of REACH legislation**

Schedule 21 confers powers to amend the REACH Regulation and the REACH Enforcement Regulations 2008.

#### *Concurrent functions in Wales*

### **141 Amendments of Schedule 7B to the Government of Wales Act 2006**

- (1) Schedule 7B to the Government of Wales Act 2006 (general restrictions on legislative competence of Senedd Cymru) is amended as follows.
- (2) In paragraph 9(8)(b) (exceptions to restrictions relating to reserved authorities)—
  - (a) omit the “or” at the end of paragraph (v);
  - (b) after paragraph (vi) insert “; or  
(vii) the Environment Act 2021.”
- (3) In paragraph 11(6)(b) (exceptions to restrictions relating to Ministers of the Crown)—
  - (a) omit the “or” at the end of paragraph (v);
  - (b) after paragraph (vi) insert “; or  
(vii) the Environment Act 2021.”



### *General provisions*

#### **142 Consequential provision**

- (1) The Secretary of State may by regulations make provision that is consequential on this Act or regulations under this Act.
- (2) The Welsh Ministers may by regulations make provision that is consequential on—
  - (a) a provision within section 147(4) (provisions to be commenced by Welsh Ministers), or
  - (b) regulations under this Act made by the Welsh Ministers.
- (3) The Scottish Ministers may by regulations make provision that is consequential on—
  - (a) a provision within section 147(5) (provisions to be commenced by Scottish Ministers), or
  - (b) regulations under this Act made by the Scottish Ministers.
- (4) The Department of Agriculture, Environment and Rural Affairs in Northern Ireland may by regulations make provision that is consequential on—
  - (a) a provision within section 147(6) (provisions to be commenced by the Department), or
  - (b) regulations under this Act made by that Department.
- (5) The Department for the Economy in Northern Ireland may by regulations make provision that is consequential on regulations under this Act made by that Department.
- (6) Regulations under this section may amend or repeal provision made by or under any legislation (whenever passed or made).
- (7) Regulations under this section are subject to the affirmative procedure if they amend or repeal any provision of—
  - (a) an Act of Parliament,
  - (b) a Measure or Act of Senedd Cymru,
  - (c) an Act of the Scottish Parliament,
  - (d) Northern Ireland legislation, or
  - (e) retained direct principal EU legislation.
- (8) Regulations under this section to which subsection (7) does not apply are subject to the negative procedure.
- (9) Regulations under this section—
  - (a) made by the Welsh Ministers, may contain only provision which, if contained in an Act of Senedd Cymru, would be within the legislative competence of the Senedd;
  - (b) made by the Scottish Ministers, may contain only provision which, if contained in an Act of the Scottish Parliament, would be within the legislative competence of the Parliament;
  - (c) made by a Northern Ireland department, may contain only provision which, if contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Assembly and would not require the Secretary of State's consent.

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- (10) Regulations under this section made by the Secretary of State may not contain provision that could be contained in regulations under this section—
- (a) made by the Welsh Ministers, unless the Welsh Ministers consent;
  - (b) made by the Scottish Ministers, unless the Scottish Ministers consent;
  - (c) made by a Northern Ireland department, unless the department consents.

### 143 Regulations

- (1) A power to make regulations under any provision of this Act includes power to make—
  - (a) supplementary, incidental, transitional or saving provision;
  - (b) different provision for different purposes or areas.
- (2) Subsection (1) does not apply to regulations under section 147 or 148.
- (3) Regulations under this Act made by—
  - (a) the Secretary of State, or
  - (b) the Welsh Ministers,
 are to be made by statutory instrument.
- (4) A power of a Northern Ireland department to make regulations under this Act is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 ([S.I. 1979/1573 \(N.I. 12\)](#)).
- (5) Where regulations under this Act made or to be made by the Secretary of State—
  - (a) are subject to the negative procedure, the statutory instrument containing them is subject to annulment in pursuance of a resolution of either House of Parliament;
  - (b) are subject to the affirmative procedure, they may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, each House of Parliament.
- (6) Where regulations under this Act made or to be made by the Welsh Ministers—
  - (a) are subject to the negative procedure, the statutory instrument containing them is subject to annulment in pursuance of a resolution of Senedd Cymru;
  - (b) are subject to the affirmative procedure, they may not be made unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, Senedd Cymru.
- (7) Where regulations under this Act made or to be made by a Northern Ireland Department—
  - (a) are subject to the negative procedure, they are subject to negative resolution within the meaning given by section 41(6) of the [Interpretation Act \(Northern Ireland\) 1954 \(c. 33 \(N.I.\)\)](#) ;
  - (b) are subject to the affirmative procedure, they may not be made unless a draft of the regulations has been laid before and approved by a resolution of the Northern Ireland Assembly.
- (8) See sections 28 and 29 of the Interpretation and Legislative Reform (Scotland) Act 2010 ([asp 10](#)) for the meaning of “the negative procedure” and “the affirmative procedure” in relation to regulations under this Act made or to be made by the Scottish Ministers.

- (9) Any provision that may be made by regulations under this Act subject to the negative procedure may be made by regulations subject to the affirmative procedure.

#### **144 Crown application**

- (1) This Act binds the Crown, subject to subsection (2).
- (2) An amendment or repeal made by this Act binds the Crown to the same extent as the provision amended or repealed.

#### **145 Financial provisions**

There is to be paid out of money provided by Parliament—

- (a) any expenditure incurred under or by virtue of this Act by the Secretary of State, and
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

#### **146 Extent**

- (1) In Part 1 of this Act (environmental governance)—
- (a) the following provisions extend to England and Wales—
- (i) Chapter 1 (improving the natural environment), except for sections 17 to 20;
- (ii) section 28 (monitoring and reporting on environmental improvement plans and targets);
- (b) sections 17 to 19 (policy statement on environmental principles) extend to England and Wales and Scotland;
- (c) the remaining provisions extend to England and Wales, Scotland and Northern Ireland.
- (2) Part 2 of this Act (environmental governance: Northern Ireland) extends to Northern Ireland, except that—
- (a) in Part 1 of Schedule 3, paragraphs 16 and 17(7) extend to England and Wales, Scotland and Northern Ireland;
- (b) an amendment or repeal made by Part 2 of Schedule 3 has the same extent as the provision amended or repealed.
- (3) In Part 3 of this Act (waste and resource efficiency)—
- (a) the following provisions extend to England and Wales, Scotland and Northern Ireland—
- (i) section 50 and Schedule 4 (producer responsibility obligations);
- (ii) section 51 and Schedule 5 (producer responsibility for disposal costs);
- (iii) section 52 and Schedule 6 (resource efficiency information);
- (iv) section 53 and Schedule 7 (resource efficiency requirements);
- (v) section 63 (procedure for regulations under the Environmental Protection Act 1990);
- (b) the following provisions extend to England and Wales and Northern Ireland—
- (i) section 54 and Schedule 8 (deposit schemes);
- (ii) sections 55 and Schedule 9 (charges for single use items);

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- (c) the following provisions extend to England and Wales—
    - (i) section 60 (hazardous waste);
    - (ii) section 66 and Schedule 10 (enforcement powers);
    - (iii) section 68 (littering enforcement);
  - (d) section 71 (waste regulation: amendment of Northern Ireland Order) extends to Northern Ireland;
  - (e) an amendment or repeal has the same extent as the provision amended or repealed, except where contained in a provision for which a different extent is provided by this subsection.
- (4) In Part 4 of this Act (air quality and environmental recall)—
- (a) section 73 and Schedule 12 (smoke control areas) extend to England and Wales;
  - (b) sections 74 to 77 (recall of motor vehicles) extend to England and Wales, Scotland and Northern Ireland;
  - (c) an amendment or repeal has the same extent as the provision amended or repealed, except where contained in a provision for which a different extent is provided by this subsection.
- (5) In Part 5 of this Act (water)—
- (a) section 84 (report on elimination of discharges from storm overflows) extends to England and Wales;
  - (b) sections 89 and 93 (water quality) extend to England and Wales, Scotland and Northern Ireland;
  - (c) section 90 (water quality - powers of Welsh Ministers) extends to England and Wales;
  - (d) section 91 (water quality - powers of Northern Ireland Department) extends to Northern Ireland;
  - (e) section 92 (Solway Tweed river basin district) extends to England and Wales and Scotland;
  - (f) an amendment or repeal has the same extent as the provision amended or repealed.
- (6) Part 6 of this Act (nature and biodiversity) extends to England and Wales, except that—
- (a) the amendments made by Schedule 15 (biodiversity gain in nationally significant infrastructure projects) have the same extent as the provisions amended, and
  - (b) section 116 and Schedule 17 (use of forest risk commodities in commercial activity) extend to England and Wales, Scotland and Northern Ireland.
- (7) Part 7 of this Act (conservation covenants) extends to England and Wales.
- (8) This Part (miscellaneous and general provisions) extends to England and Wales, Scotland and Northern Ireland.

## 147 Commencement

- (1) The following provisions of this Act come into force on the day on which this Act is passed—
- (a) section 63 (procedure for regulations under the Environmental Protection Act 1990);

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- (b) this Part of this Act (miscellaneous and general provisions), except 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.
- (2) The following provisions of this Act come into force at the end of the period of 2 months beginning with the day on which this Act is passed—
- (a) section 51 and Schedule 5 (producer responsibility for disposal costs) so far as relating to England and Wales and Scotland;
  - (b) section 52 and Schedule 6 (resource efficiency information) so far as relating to England and Wales and Scotland;
  - (c) section 53 and Schedule 7 (resource efficiency requirements) so far as relating to England and Wales and Scotland;
  - (d) section 54 and Schedule 8 (deposit schemes) so far as relating to England and Wales;
  - (e) section 55 and Schedule 9 (charges for single use items) so far as relating to England and Wales;
  - (f) section 56 (carrier bag charge) so far as relating to England and Wales;
  - (g) section 58 (electronic waste tracking);
  - (h) section 66 and Schedule 10 (enforcement powers);
  - (i) section 70 (regulation of polluting activities);
  - (j) section 80 (storm overflows) and section 84 (report on elimination of discharges from storm overflows);
  - (k) section 88 (water abstraction in England);
  - (l) section 89 (water quality), except 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;
  - (m) sections 90, 92 and 93 (water quality);
  - (n) section 97 (disclosure of HMRC information).
- (3) The following provisions of this Act come into force on such day as the Secretary of State may by regulations appoint —
- (a) Part 1 (environmental governance);
  - (b) section 50 and Schedule 4 (producer responsibility obligations), so far as relating to England;
  - (c) section 57 (separate collection of waste);
  - (d) section 60 (hazardous waste), so far as relating to England;
  - (e) section 62 (transfrontier shipments of waste);
  - (f) section 64 (charging powers), so far as relating to the Environment Agency;
  - (g) section 68 (littering enforcement), so far as relating to England;
  - (h) in section 69 (fixed penalty notices), subsections (2) and (4) and subsection (1) so far as relating to those subsections;
  - (i) section 72 and Schedule 11 (local air quality management framework);
  - (j) Parts 1 and 3 of Schedule 12 (smoke control areas) and section 73 so far as relating to those Parts;
  - (k) sections 74 to 77 (recall of motor vehicles);
  - (l) sections 78 and 79 (water management plans etc), so far as relating to undertakers whose areas are wholly or mainly in England;
  - (m) sections 81 and 82 (reporting and monitoring duties relating to discharges from storm overflows etc);

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- (n) section 83 (reduction of adverse impacts of storm overflows);
  - (o) sections 85 and 87 (amendments to Water Industry Act 1991), so far as relating to undertakers whose areas are wholly or mainly in England and licensees using the systems of such undertakers;
  - (p) section 86 and Schedule 13 (appointment of water and sewerage undertakers in England);
  - (q) section 94 (valuation of other land in drainage districts: England);
  - (r) section 96 (valuation of agricultural land in drainage districts), so far as relating to internal drainage districts which are wholly or mainly in England;
  - (s) Part 6 (nature and biodiversity);
  - (t) Part 7 (conservation covenants).
- (4) The following provisions of this Act come into force on such day as the Welsh Ministers may by regulations appoint—
- (a) section 50 and Schedule 4 (producer responsibility obligations), so far as relating to Wales;
  - (b) section 60 (hazardous waste), so far as relating to Wales;
  - (c) section 64 (charging powers), so far as relating to the Natural Resources Body for Wales;
  - (d) section 68 (littering enforcement), so far as relating to Wales;
  - (e) in section 69 (fixed penalty notices), subsections (3) and (5) and subsection (1) so far as relating to those subsections;
  - (f) Part 2 of Schedule 12 (smoke control areas) and section 73 so far as relating to that Part;
  - (g) sections 78 and 79 (water management plans etc), so far as relating to undertakers whose areas are wholly or mainly in Wales;
  - (h) sections 85 and 87 (amendments to Water Industry Act 1991), so far as relating to undertakers whose areas are wholly or mainly in Wales and licensees using the systems of such undertakers;
  - (i) section 95 (valuation of other land in drainage districts: Wales);
  - (j) section 96 (valuation of agricultural land in drainage districts), so far as relating to internal drainage districts which are wholly or mainly in Wales.
- (5) The following provisions of this Act come into force on such day as the Scottish Ministers may by regulations appoint—
- (a) section 50 and Schedule 4 (producer responsibility obligations), so far as relating to Scotland;
  - (b) section 64 (charging powers), so far as relating to the Scottish Environment Protection Agency.
- (6) The following provisions of this Act come into force on such day as the Department of Agriculture, Environment and Rural Affairs in Northern Ireland may by order appoint—
- (a) Part 2 (environmental governance: Northern Ireland);
  - (b) section 50 and Schedule 4 (producer responsibility obligations), so far as relating to Northern Ireland;
  - (c) section 51 and Schedule 5 (producer responsibility for disposal costs) so far as relating to Northern Ireland;
  - (d) section 52 and Schedule 6 (resource efficiency information) so far as relating to Northern Ireland;

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- (e) section 53 and Schedule 7 (resource efficiency requirements) so far as relating to Northern Ireland;
  - (f) section 54 and Schedule 8 (deposit schemes) so far as relating to Northern Ireland;
  - (g) section 55 and Schedule 9 (charges for single use items), so far as relating to Northern Ireland;
  - (h) section 56 (carrier bag charge) so far as relating to Northern Ireland;
  - (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;
  - (o) section 91 (water quality: powers of Northern Ireland Department);
  - (p) section 140 and Schedule 21 (amendment of REACH legislation) so far as relating to powers of a Northern Ireland department to make regulations under paragraph 2 of that Schedule.
- (7) An order under subsection (6) may not appoint a day for the coming into force of the following provisions of Schedule 3 (OEP’s Northern Ireland functions), unless the Secretary of State consents—
- (a) paragraphs 16 and 17(7);
  - (b) Part 2.
- (8) The power to make an order under subsection (6) is exercisable by statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 (S.I. 1979/1573 (N.I. 12)).
- (9) An order under subsection (6) may not be made unless a draft of the order has been laid before and approved by a resolution of the Northern Ireland Assembly.
- (10) A power to make regulations or an order under this section includes power to appoint different days for different purposes or areas.

#### **148 Transitional or saving provision**

- (1) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act.
- (2) The Welsh Ministers may by regulations make transitional or saving provision in connection with the coming into force of any provision within section 147(4) (provisions to be commenced by Welsh Ministers).
- (3) The Scottish Ministers may by regulations make transitional or saving provision in connection with the coming into force of any provision within section 147(5) (provisions to be commenced by Scottish Ministers).
- (4) The Department of Agriculture, Environment and Rural Affairs in Northern Ireland may by regulations make transitional or saving provision in connection with the



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*Status: This is the original version (as it was originally enacted).*

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coming into force of any provision within section 147(6) (provisions to be commenced by Department).

- (5) Regulations under this section—
- (a) made by the Welsh Ministers, may contain only provision which, if contained in an Act of Senedd Cymru, would be within the legislative competence of the Senedd;
  - (b) made by the Scottish Ministers, may contain only provision which, if contained in an Act of the Scottish Parliament, would be within the legislative competence of that Parliament;
  - (c) made by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, may contain only provision which, if contained in an Act of the Northern Ireland Assembly, would be within the legislative competence of the Assembly and would not require the Secretary of State's consent.
- (6) Regulations under this section made by the Secretary of State may not contain provision that could be contained in regulations under this section—
- (a) made by the Welsh Ministers, unless the Welsh Ministers consent;
  - (b) made by the Scottish Ministers, unless the Scottish Ministers consent;
  - (c) made by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland, unless the Department consents.
- (7) Any provision which could be made by regulations under this section made by the Department of Agriculture, Environment and Rural Affairs in Northern Ireland may be made by an order made by the Department under section 147.
- (8) A power to make regulations or an order under this section includes power to make different provision for different purposes or areas.

#### **149 Short title**

This Act may be cited as the Environment Act 2021.