

Up to date as of 31st March 2015.

Environment Act 1995

1995 CHAPTER 25

An Act to provide for the establishment of a body corporate to be known as the Environment Agency and a body corporate to be known as the Scottish Environment Protection Agency; to provide for the transfer of functions, property, rights and liabilities to those bodies and for the conferring of other functions on them; to make provision with respect to contaminated land and abandoned mines; to make further provision in relation to National Parks; to make further provision for the control of pollution, the conservation of natural resources and the conservation or enhancement of the environment; to make provision for imposing obligations on certain persons in respect of certain products or materials; to make provision in relation to fisheries; to make provision for certain enactments to bind the Crown; to make provision with respect to the application of certain enactments in relation to the Isles of Scilly; and for connected purposes

[19th July 1995]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Part I

The Environment Agency and the Scottish Environment Protection Agency

Chapter I

The Environment Agency

Establishment of the Agency

1 The Environment Agency

(1) There shall be a body corporate to be known as the Environment Agency or, in Welsh, Asiantaeth yr Amgylchedd (in this Act referred to as “the Agency”), for the purpose of carrying out the functions transferred or assigned to it by or under this Act.

(2) The Agency shall consist of not less than eight nor more than fifteen members of whom—

- (a) three shall be appointed by the Minister; and
- (b) the others shall be appointed by the Secretary of State.

(3) The Secretary of State shall designate—

- (a) one of the members as the chairman of the Agency, and
- (b) another of them as the deputy chairman of the Agency.

(4) In appointing a person to be a member of the Agency, the Secretary of State or, as the case may be, the Minister shall have regard to the desirability of appointing a person who has experience of and has shown capacity in, some matter relevant to the functions of the Agency.

- (5) Subject to the provisions of section 38 below, the Agency shall not be regarded—
- (a) as the servant or agent of the Crown, or as enjoying any status, immunity or privilege of the Crown; or
 - (b) by virtue of any connection with the Crown, as exempt from any tax, duty, rate, levy or other charge whatsoever, whether general or local;

and the Agency's property shall not be regarded as property of or property held on behalf of the Crown.

- (6) The provisions of Schedule 1 to this Act shall have effect with respect to the Agency.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Transfer of Functions

See further in relation to the transfer of functions under this section to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Functions under this section, so far as exercisable by the Welsh Ministers, are transferred to the Secretary of State by the Natural Resources Body for Wales (Consequential Provision) Order 2013, SI 2013/1821, art 5.

Transfer of functions, property etc to the Agency

2 Transfer of functions to the Agency

- (1) On the transfer date there shall by virtue of this section be transferred to the Agency—
- (a) the functions of the National Rivers Authority, that is to say—
 - (i) its functions under or by virtue of Part II (water resources management) of the Water Resources Act 1991 (in this Part referred to as “the 1991 Act”);
 - (ii) its functions under or by virtue of Part III of that Act (control of pollution of water resources);
 - (iii) its functions under or by virtue of Part IV of that Act (flood defence) and the Land Drainage Act 1991 and the functions transferred to the Authority by virtue of section 136(8) of the Water Act 1989 and paragraph 1(3) of Schedule 15 to that Act (transfer of land drainage functions under local statutory provisions and subordinate legislation);
 - (iv) its functions under or by virtue of Part VII of the 1991 Act (land and works powers);
 - (v) its functions under or by virtue of . . . the Sea Fisheries Regulation Act 1966, the Salmon and Freshwater Fisheries Act 1975, Part V of the 1991 Act or any other enactment relating to fisheries;
 - (vi) the functions as a navigation authority, harbour authority or conservancy authority which were transferred to the Authority by virtue of Chapter V of Part III of the Water Act 1989 or paragraph 23(3) of Schedule 13 to that Act or which have been

transferred to the Authority by any order or agreement under Schedule 2 to the 1991 Act;

(vii) its functions under Schedule 2 to the 1991 Act;

(viii) the functions assigned to the Authority by or under any other enactment, apart from this Act;

(b) the functions of waste regulation authorities, that is to say, the functions conferred or imposed on them by or under—

(i) the Control of Pollution (Amendment) Act 1989, or

(ii) Part II of the Environmental Protection Act 1990 (in this Part referred to as “the 1990 Act”),

or assigned to them by or under any other enactment, apart from this Act;

(c) the functions of disposal authorities under or by virtue of the waste regulation provisions of the Control of Pollution Act 1974;

(d) the functions of the chief inspector for England and Wales constituted under section 16(3) of the 1990 Act, that is to say, the functions conferred or imposed on him by or under Part I of that Act or assigned to him by or under any other enactment, apart from this Act;

(e) the functions of the chief inspector for England and Wales appointed under section 4(2)(a) of the Radioactive Substances Act 1993, that is to say, the functions conferred or imposed on him by or under that Act or assigned to him by or under any other enactment, apart from this Act;

(f) the functions conferred or imposed by or under the Alkali, &c, Works Regulation Act 1906 (in this section referred to as “the 1906 Act”) on the chief, or any other, inspector (within the meaning of that Act), so far as exercisable in relation to England and Wales;

(g) so far as exercisable in relation to England and Wales, the functions in relation to improvement notices and prohibition notices under Part I of the Health and Safety at Work etc Act 1974 (in this section referred to as “the 1974 Act”) of inspectors appointed under section 19 of that Act by the Secretary of State in his capacity as the enforcing authority responsible in relation to England and Wales for the enforcement of the 1906 Act and section 5 of the 1974 Act; and

(h) the functions of the Secretary of State specified in subsection (2) below.

(2) The functions of the Secretary of State mentioned in subsection (1)(h) above are the following, that is to say—

(a) so far as exercisable in relation to England and Wales, his functions under section 30(1) of the Radioactive Substances Act 1993 (power to dispose of radioactive waste);

(b) his functions under Chapter III of Part IV of the Water Industry Act 1991 in relation to special category effluent, within the meaning of that Chapter, other than any function of making regulations or of making orders under section 139 of that Act;

(c) so far as exercisable in relation to England and Wales, the functions conferred or imposed on him by virtue of his being, for the purposes of Part I of the 1974 Act, the authority which is by any of the relevant statutory provisions made responsible for the enforcement of the 1906 Act and section 5 of the 1974 Act;

- (d) so far as exercisable in relation to England and Wales, his functions under, or under regulations made by virtue, of section 9 of the 1906 Act (registration of works), other than any functions of his as an appellate authority or any function of making regulations;
- (e) so far as exercisable in relation to England and Wales, his functions under regulations 7(1) and 8(2) of and paragraph 2(2)(c) of Schedule 2 to, the Sludge (Use in Agriculture) Regulations 1989 (which relate to the provision of information and the testing of soil).

(3) . . .

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Sub-s (1): in para (a)(v) words omitted repealed in relation to England and Wales by SI 2009/463, reg 45, Sch 2, para 9(a) and in relation to Scotland by SSI 2009/85, reg 48, Sch 2, para 9(a).

Date in force (in relation to England and Wales): 27 March 2009: see SI 2009/463, reg 1(2)(c).

Date in force (in relation to Scotland): 27 March 2009: see SSI 2009/85, reg 1(2)(c).

Sub-s (3): repealed by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

3 Transfer of property, rights and liabilities to the Agency

(1) On the transfer date—

(a) the property, rights and liabilities—

(i) of the National Rivers Authority, and

(ii) of the London Waste Regulation Authority,

shall, by virtue of this paragraph, be transferred to and vested in the Agency;

(b) any property, rights or liabilities which are the subject of—

(i) a scheme made under the following provisions of this section by the Secretary of State, or

(ii) a scheme made under those provisions by a body which is a waste regulation authority and approved (with or without modifications) under those provisions by the Secretary of State,

shall be transferred to and vested in the Agency by and in accordance with the scheme.

(2) . . .

(3) . . .

(4) . . .

(5) . . .

- (6) . . .
- (7) . . .
- (8) Schedule 2 to this Act shall have effect in relation to transfers by or under this section.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Sub-s (1): Appointment: 1 April 1996: see SI 1996/186, art 3.

Sub-ss (2)–(8): Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

Sub-ss (2)–(7): repealed by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

4 Principal aim and objectives of the Agency

- (1) It shall be the principal aim of the Agency (subject to and in accordance with the provisions of this Act or any other enactment and taking into account any likely costs) in discharging its functions so to protect or enhance the environment, taken as a whole, as to make the contribution towards attaining the objective of achieving sustainable development mentioned in subsection (3) below.
- (2) The [Secretary of State] shall from time to time give guidance to the Agency with respect to objectives which [the Secretary of State considers] it appropriate for the Agency to pursue in the discharge of its functions.
- (3) The guidance given under subsection (2) above must include guidance with respect to the contribution which, having regard to the Agency's responsibilities and resources, the [Secretary of State considers] it appropriate for the Agency to make, by the discharge of its functions, towards attaining the objective of achieving sustainable development.
- (4) In discharging its functions, the Agency shall have regard to guidance given under this section.
- (5) The power to give guidance to the Agency under this section shall only be exercisable [after consultation with—
- (a) the Agency,
 - (b) Natural England, and
 - (c) such other persons as] the [Secretary of State considers] it appropriate to consult in relation to the guidance in question.
- (6) A draft of any guidance proposed to be given under this section shall be laid before each House of Parliament and the guidance shall not be given until after the period of 40 days beginning with the day on which the draft was so laid or, if the draft is laid on different days, the later of the two days.
- (7) If within the period mentioned in subsection (6) above, either House resolves that the guidance, the draft of which was laid before it, should not be given, the [Secretary of State] shall not give that guidance.
- (8) In reckoning any period of 40 days for the purposes of subsection (6) or (7) above, no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses

are adjourned for more than four days.

(9) The [Secretary of State] shall arrange for any guidance given under this section to be published in such manner as [the Secretary of State considers] appropriate.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

Sub-s (2): words “Secretary of State” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 362(1), (2)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): words “the Secretary of State considers” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 362(1), (2)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): words “Secretary of State considers” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 362(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (5): words from “after consultation with—” to “other persons as” in square brackets substituted by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 140.

Date in force: 1 October 2006: see SI 2006/2541, art 2.

Sub-s (5): in para (c) words “Secretary of State considers” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 362(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (7): words “Secretary of State” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 362(1), (4).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (9): words “Secretary of State” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 362(1), (5)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (9): words “the Secretary of State considers” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 362(1), (5)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

[Chapter 1A

General Functions of the Agency and the Natural Resources Body for Wales]

NOTES

Amendment

Chapter heading: inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 363(1).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

5 General functions with respect to pollution control

(1) [An appropriate agency's] pollution control powers shall be exercisable for the purpose of preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.

(2) [An appropriate agency] shall, for the purpose—

- (a) of facilitating the carrying out of its pollution control functions, or
- (b) of enabling it to form an opinion of the general state of pollution of the environment,

compile information relating to such pollution (whether the information is acquired by the Agency carrying out observations or is obtained in any other way).

(3) If required by [the appropriate national authority] to do so, [an appropriate agency] shall—

- (a) carry out assessments (whether generally or for such particular purpose as may be specified in the requirement) of the effect, or likely effect, on the environment of existing or potential levels of pollution of the environment and report its findings to [the appropriate national authority]; or
- (b) prepare and send to [the appropriate national authority] a report identifying—
 - (i) the options which the [appropriate agency] considers to be available for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment, whether generally or in cases or circumstances specified in the requirement; and
 - (ii) the costs and benefits of such options as are identified by the [appropriate agency] pursuant to sub-paragraph (i) above.

(4) [An appropriate agency] shall follow developments in technology and techniques for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment.

(5) In this section, “pollution control powers” and “pollution control functions”, in relation to [an appropriate agency], mean respectively its powers or its functions under or by virtue of the following enactments, that is to say—

- (a) the Alkali, &c, Works Regulation Act 1906;
- (b) Part I of the Health and Safety at Work etc Act 1974;
- (c) Part I of the Control of Pollution Act 1974;
- (d) the Control of Pollution (Amendment) Act 1989;
- (e) Parts I, II and IIA of the 1990 Act (integrated pollution control etc, waste on land and contaminated land);
- (f) Chapter III of Part IV of the Water Industry Act 1991 (special category effluent);
- (g) Part III and sections 161 to 161D of the 1991 Act (control of pollution of water resources);
- (h) *the Radioactive Substances Act 1993*;
- [(i) regulations under section 2 of the Pollution Prevention and Control Act 1999;]
- (j) regulations made by virtue of section 2(2) of the European Communities Act 1972, to the

extent that the regulations relate to pollution.

[(6) But in relation to the Natural Resources Body for Wales, “pollution control powers” and “pollution control functions” do not include powers or functions which—

- (a) were exercisable by the Countryside Council for Wales or the Forestry Commissioners immediately before 1 April 2013; and
- (b) are functions of that Body by virtue of the Natural Resources Body for Wales (Functions) Order 2013.]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Sub-ss (1), (3), (4): Appointment: 1 April 1996: see SI 1996/186, art 3.

Sub-ss (2), (5): Appointment: 1 February 1996: see SI 1996/186, art 2.

Amendment

Sub-s (1): words “An appropriate agency’s” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 364(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): words “An appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 364(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): words “the appropriate national authority” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 364(1), (4)(a)(i).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): words “an appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 364(1), (4)(a)(ii).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): in para (a) words “the appropriate national authority” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 364(1), (4)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): in para (b) words “the appropriate national authority” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 364(1), (4)(c)(i).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): in para (b)(i), (ii) words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 364(1), (4)(c)(ii).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (4): words “An appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 364(1), (5).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (5): words “an appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 364(1), (5).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (5): para (h) repealed, in relation to England and Wales, by SI 2010/675, regs 107, 109(1), Sch 26, Pt 1, para 13, (1), (2), Sch 28.

Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).

Sub-s (5): para (i) inserted by the Pollution Prevention and Control Act 1999, s 6(1), Sch 2, paras 14, 15.

Date in force (in relation to England and Wales): 21 March 2000: see SI 2000/800, art 2.

Date in force (in relation to Scotland): to be appointed: see the Pollution Prevention and Control Act 1999, s 7(3).

Sub-s (6): inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 364(1), (6).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

6 General provisions with respect to water

(1) It shall be the duty of [an appropriate agency], to such extent as it considers desirable, generally to promote—

- (a) the conservation and enhancement of the natural beauty and amenity of inland and coastal waters and of land associated with such waters;
- (b) the conservation of flora and fauna which are dependent on an aquatic environment; and
- (c) the use of such waters and land for recreational purposes;

and it shall be the duty of [an appropriate agency], in determining what steps to take in performance of the duty imposed by virtue of paragraph (c) above, to take into account the needs of persons who are chronically sick or disabled.

This subsection is without prejudice to the duties of the Agency under section 7 below.

(2) It shall be the duty of the Agency to take all such action as it may from time to time consider, in accordance with any directions given under section 40 below, to be necessary or expedient for the purpose—

- (a) of conserving, redistributing or otherwise augmenting water resources in England . . . ; and
- (b) of securing the proper use of water resources in England . . . [(including the efficient use of those resources)];

but nothing in this subsection shall be construed as relieving any water undertaker of the obligation to develop water resources for the purpose of performing any duty imposed on it by virtue of section 37 of the Water Industry Act 1991 (general duty to maintain water supply system).

[(2A) The Natural Resources Body for Wales must take all such action as it may from time to time consider, in accordance with any directions given under article 11 of the Natural Resources Body for Wales (Establishment) Order 2012 (SI 2012/1903), to be necessary or expedient for the purpose—

- (a) of conserving, redistributing or otherwise augmenting water resources in Wales; and
- (b) of securing the proper use of water resources in Wales (including the efficient use of those resources);

but nothing in this subsection shall be construed as relieving any water undertaker of the obligation to develop water resources for the purpose of performing any duty imposed on it by virtue of section 37 of the Water Industry Act 1991 (general duty to maintain water supply system).]

(3) The provisions of the 1991 Act relating to the functions of the Agency under Chapter II of Part II of that Act and the related water resources provisions so far as they relate to other functions of the Agency shall not apply to so much of any inland waters as—

- (a) are part of the River Tweed;
- (b) are part of the River Esk or River Sark at a point where either of the banks of the river is in Scotland; or
- (c) are part of any tributary stream of the River Esk or the River Sark at a point where either of the banks of the tributary stream is in Scotland;

[(3A) Subsection (3) above shall apply to—

- (a) sections 3 and 4 of the Water Act 2003; and
- (b) such of the related water resources provisions as apply in relation to those sections by virtue of section 33(2) of the Water Act 2003,

as it applies to the provisions referred to in that subsection.]

[(4) The Agency shall in relation to England and [the Natural Resources Body for Wales shall in relation to] Wales exercise a general supervision over all matters relating to flood and coastal erosion risk management, in accordance with Part 1 of the Flood and Water Management Act 2010.]

(5) The Agency's flood defence functions shall extend to the territorial sea adjacent to England and [the Natural Resources Body for Wales' flood defence functions shall extend to the territorial sea adjacent to] Wales in so far as—

- (a) [the region of any Regional Flood and Coastal Committee] includes any area of that territorial sea; or
- (b) section 165(2) or (3) of the 1991 Act (drainage works for the purpose of defence against sea water or tidal water, and works etc to secure an adequate outfall for a main river) provides for the exercise of any power in the territorial sea.

(6) It shall be the duty of [an appropriate agency] to maintain, improve and develop [fisheries of—

- (a) salmon, trout, eels, lampreys, smelt and freshwater fish, and
- (b) fish of such other description as may be specified for the purposes of this subsection by order under section 40A of the Salmon and Freshwater Fisheries Act 1975].

(7) The area in respect of which the Agency shall carry out its functions relating to fisheries shall be the whole of England . . . , together with—

- (a) such part of the territorial sea adjacent to England . . . as extends for six miles from the baselines from which the breadth of that sea is measured,
- (b) in the case of—
 - (i) . . .
 - (ii) the Salmon and Freshwater Fisheries Act 1975,
 - (iii) Part V of the 1991 Act (general control of fisheries), and

(iv) subsection (6) above,

so much of the River Esk, with its banks and tributary streams up to their source, as is situated in Scotland, and

(c) in the case of sections 31 to 34 and 36(2) of the Salmon and Freshwater Fisheries Act 1975 as applied by section 39(1B) of that Act, so much of the catchment area of the River Esk as is situated in Scotland,

but, in the case of the enactments specified in paragraph (b) above, excluding the River Tweed.

[(7A) The area in respect of which the Natural Resources Body for Wales shall carry out its functions relating to fisheries shall be the whole of Wales, together with such part of the territorial sea adjacent to Wales as extends for six miles from the baselines from which the breadth of that sea is measured.]

(8) In this section—

“miles” means international nautical miles of 1,852 metres;

“the related water resources provisions” has the same meaning as it has in the 1991 Act;

“the River Tweed” means “the river” within the meaning of the Tweed Fisheries Amendment Act 1859 as amended by byelaws;

[“salmon”, “trout”, “eels”, “smelt”, “fish” and “freshwater fish” have the same meanings as in the Salmon and Freshwater Fisheries Act 1975].

[(9) For the purposes of this section, the parts of the territorial sea which are adjacent to Wales, and which are therefore not adjacent to England, are the parts of the sea which are treated as adjacent to Wales for the purposes of section 158 of the Government of Wales Act 2006.]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Sub-s (1): words “an appropriate agency” in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 365(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): in paras (a), (b) words omitted repealed by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 365(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): in para (b) words “(including the efficient use of those resources)” in square brackets inserted by the Water Act 2003, s 72.

Date in force: 1 April 2004: see SI 2004/641, art 3(s).

Sub-s (2A): inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 365(1), (4).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3A): inserted by the Water Act 2003, s 101(1), Sch 7, Pt 1, para 15(1), (2).

Date in force: 1 April 2006: by virtue of SI 2006/984, art 2(s)(i).

Sub-s (4): substituted by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 52.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i).

- Sub-s (4): words “the Natural Resources Body for Wales shall in relation to” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 365(1), (5).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (5): words from “the Natural Resources” to “sea adjacent to” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 365(1), (6).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (5): in para (a) words “the region of any Regional Flood and Coastal Committee” in square brackets substituted by the Water Act 2014, s 89, Sch 10, para 16.
Date in force: 14 July 2014: see the Water Act 2014, s 94(2)(r).
- Sub-s (6): words “an appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 365(1), (7).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (6): words from “fisheries of–” to “Salmon and Freshwater Fisheries Act 1975” in square brackets substituted by the Marine and Coastal Access Act 2009, s 230(1), (2).
Date in force (in so far as it confers power to make regulations or an order): 12 November 2009: see the Marine and Coastal Access Act 2009, s 324(1)(c).
Date in force (for remaining purposes): 12 January 2010: see SI 2009/3345, art 2, Schedule, para 14.
- Sub-s (7): first words omitted repealed by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 365(1), (8).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (7): in para (a) words omitted repealed by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 365(1), (8).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (7): para (b)(i) repealed in relation to England and Wales by SI 2009/463, reg 45, Sch 2, para 9(b) and in relation to Scotland by SSI 2009/85, reg 48, Sch 2, para 9(b).
Date in force (in relation to England and Wales): 27 March 2009: see SI 2009/463, reg 1(2)(c).
Date in force (in relation to Scotland): 27 March 2009: see SSI 2009/85, reg 1(2)(c).
- Sub-s (7A): inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 365(1), (9).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (8): definition ““salmon”, “trout”, “eels”, “smelt”, “fish” and “freshwater fish”” inserted by the Marine and Coastal Access Act 2009, s 230(1), (3).
Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 14.
- Sub-s (9): inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 365(1), (10).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

7 General environmental and recreational duties

- (1) It shall be the duty of each of the Ministers and of the Agency, in formulating or considering—
- (a) any proposals relating to any functions of the Agency other than its pollution control functions, so far as may be consistent—
- (i) with the purposes of any enactment relating to the functions of the Agency,
- (ii) in the case of each of the Ministers, with the objective of achieving sustainable development,
- (iii) in the case of the Agency, with any guidance under section 4 above,

(iv) in the case of the Secretary of State, with his duties under section 2 of the Water Industry Act 1991,

so to exercise any power conferred on him or it with respect to the proposals as to further the conservation and enhancement of natural beauty and the conservation of flora, fauna and geological or physiographical features of special interest;

(b) any proposals relating to pollution control functions of the Agency, to have regard to the desirability of conserving and enhancing natural beauty and of conserving flora, fauna and geological or physiographical features of special interest;

(c) any proposal relating to any functions of the Agency—

(i) to have regard to the desirability of protecting and conserving buildings, sites and objects of archaeological, architectural, engineering or historic interest;

(ii) to take into account any effect which the proposals would have on the beauty or amenity of any rural or urban area or on any such flora, fauna, features, buildings, sites or objects; and

(iii) to have regard to any effect which the proposals would have on the economic and social well-being of local communities in rural areas.

(2) Subject to subsection (1) above, it shall be the duty of each of the Ministers and of the Agency, in formulating or considering any proposals relating to any functions of the Agency—

(a) to have regard to the desirability of preserving for the public any freedom of access to areas of woodland, mountains, moor, heath, down, cliff or foreshore and other places of natural beauty;

(b) to have regard to the desirability of maintaining the availability to the public of any facility for visiting or inspecting any building, site or object of archaeological, architectural, engineering or historic interest; and

(c) to take into account any effect which the proposals would have on any such freedom of access or on the availability of any such facility.

(3) Subsections (1) and (2) above shall apply so as to impose duties on the Agency in relation to—

(a) any proposals relating to the functions of a water undertaker or sewerage undertaker,

(b) any proposals relating to the management, by the company holding an appointment as such an undertaker, of any land for the time being held by that company for any purpose whatever (whether or not connected with the carrying out of the functions of a water undertaker or sewerage undertaker), and

(c) any proposal which by virtue of section 156(7) of the Water Industry Act 1991 (disposals of protected land) falls to be treated for the purposes of section 3 of that Act as a proposal relating to the functions of a water undertaker or sewerage undertaker,

as they apply in relation to proposals relating to the Agency's own functions, other than its pollution control functions.

(4) Subject to obtaining the consent of any navigation authority, harbour authority or conservancy authority before doing anything which causes obstruction of, or other interference with, navigation which is subject to the control of that authority, it shall be the duty of the Agency to take such steps as are—

(a) reasonably practicable, and

(b) consistent with the purposes of the enactments relating to the functions of the Agency,

for securing, so long as the Agency has rights to the use of water or land associated with water, that those rights are exercised so as to ensure that the water or land is made available for recreational purposes and is so made available in the best manner.

(5) It shall be the duty of the Agency, in determining what steps to take in performance of any duty imposed by virtue of subsection (4) above, to take into account the needs of persons who are chronically sick or disabled.

(6) Nothing in this section, the following provisions of this Act or the 1991 Act shall require recreational facilities made available by the Agency to be made available free of charge.

(7) In this section—

“building” includes structure;

“pollution control functions”, in relation to the Agency, has the same meaning as in section 5 above.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Transfer of Functions

Functions of the Ministers and the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

8 Environmental duties with respect to sites of special interest

(1) Where [Natural England] . . . is of the opinion that any area of land in England . . .—

(a) is of special interest by reason of its flora, fauna or geological or physiographical features, and

(b) may at any time be affected by schemes, works, operations or activities of [an appropriate agency] or by an authorisation given by [an appropriate agency],

[Natural England] shall notify the fact that the land is of special interest for that reason [to the appropriate agency].

[(1A) Where the Natural Resources Body for Wales is of the opinion that any area of land in Wales—

(a) is of special interest by reason of its flora, fauna or geological or physiographical features, and

(b) may at any time be affected by schemes, works, operations or activities of the Agency or by an authorisation given by the Agency,

the Natural Resources Body for Wales shall notify the fact that the land is of special interest for that reason to the Agency.]

(2) Where a National Park authority or the Broads Authority is of the opinion that any area of land in a National Park or in the Broads—

(a) is land in relation to which the matters for the purposes of which sections 6(1) and 7 above

(other than section 7(1)(c)(iii) above) have effect are of particular importance, and

- (b) may at any time be affected by schemes, works, operations or activities of [an appropriate agency] or by an authorisation given by [an appropriate agency],

the National Park authority or Broads Authority shall notify the [appropriate agency] of the fact that the land is such land, and of the reasons why those matters are of particular importance in relation to the land.

(3) Where [an appropriate agency] has received a notification under subsection (1)[, (1A)] or (2) above with respect to any land, it shall consult the notifying body before carrying out or authorising any works, operations or activities which appear to the [appropriate agency] to be likely—

- (a) to destroy or damage any of the flora, fauna, or geological or physiographical features by reason of which the land is of special interest; or
- (b) significantly to prejudice anything the importance of which is one of the reasons why the matters mentioned in subsection (2) above are of particular importance in relation to that land.

(4) Subsection (3) above shall not apply in relation to anything done in an emergency where particulars of what is done and of the emergency are notified to [Natural England], [the Natural Resources Body for Wales], the National Park authority in question or, as the case may be, the Broads Authority as soon as practicable after that thing is done.

(5) In this section—

“authorisation” includes any consent or licence;

“the Broads” has the same meaning as in the Norfolk and Suffolk Broads Act 1988; and

“National Park authority” . . . means a National Park authority established under section 63 below which has become the local planning authority for the National Park in question.

(6) . . .

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Sub-s (1): words “Natural England” in square brackets in the first place they occur substituted by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 141(1), (2)(a).

Date in force: 1 October 2006: see SI 2006/2541, art 2.

Sub-s (1): first words omitted repealed by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (2)(a)(i).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): second words omitted repealed by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (2)(a)(ii).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): in para (b) words “an appropriate agency” in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (2)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings

- see art 10, Sch 7 thereto.
- Sub-s (1): words “Natural England” in square brackets in the second place they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (2)(c)(i).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (1): words “to the appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (2)(c)(ii).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (1A): inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (3).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (2): in para (b) words “an appropriate agency” in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (4)(a).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (2): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (4)(b).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (3): words “an appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (5)(a).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (3): reference to “, (1A)” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (5)(b).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (3): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (5)(c).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (4): words “Natural England” in square brackets substituted by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 141(1), (3).
Date in force: 1 October 2006: see SI 2006/2541, art 2.
- Sub-s (4): words “the Natural Resources Body for Wales” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (6).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (5): words omitted repealed by s 120, Sch 24 hereto.
- Sub-s (6): repealed by s 120, Sch 24 hereto.

9 Codes of practice with respect to environmental and recreational duties

[(1) The appropriate national authority shall have power by order to approve any code of practice issued (whether by the appropriate national authority or by another person) for the purpose of—

- (a) giving practical guidance to an appropriate agency with respect to any of the matters for the purposes of which the provisions specified in subsection (5) have effect, and
- (b) promoting what appear to the appropriate national authority to be desirable practices by an appropriate agency with respect to those matters,

and may at any time by such an order approve a modification of such a code or withdraw its approval of such a code or modification.]

(2) In discharging its duties under [the provisions specified in subsection (5), an appropriate agency]

shall have regard to any code of practice, and any modifications of a code of practice, for the time being approved under this section.

(3) [The Secretary of State shall not] make an order under this section unless he has first consulted—

- (a) the Agency;
- (b) [Natural England] . . .;
- (c) the Historic Buildings and Monuments Commission for England;
- (d) the Sports Council . . .; and
- (e) such other persons as he considers it appropriate to consult.

[(3A) The Welsh Ministers shall not make an order under this section unless they have first consulted—

- (a) the Natural Resources Body for Wales;
- (b) the Sports Council for Wales; and
- (c) such other persons as they consider it appropriate to consult.]

(4) The power . . . to make an order under this section shall be exercisable by statutory instrument; and any statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament [(in the case of an order made by the Secretary of State) or of the National Assembly for Wales (in the case of an order made by the Welsh Ministers)].

[(5) The provisions referred to in subsections (1) and (2) are—

- (a) in relation to the Agency, sections 6(1), 7 and 8;
- (b) in relation to the Natural Resources Body for Wales—
 - (i) sections 6(1) and 8; and
 - (ii) articles 5A, 5C, 5D, 5E and 5G of the Natural Resources Body for Wales (Establishment) Order 2012 (SI 2012/1903).]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

Sub-s (1): substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 367(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): words “the provisions specified in subsection (5), an appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 367(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): words “The Secretary of State shall not” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 367(1), (4)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): in para (b) words “Natural England” in square brackets substituted by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 142.

Date in force: 1 October 2006: see SI 2006/2541, art 2; for transitional provisions see art 3, Schedule, para 1 thereto.

Sub-s (3): in para (b) words omitted repealed by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (4)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): in para (d) words omitted repealed by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (4)(c).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3A): inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (5).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (4): words omitted repealed by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (6)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (4): words from “(in the case” to “the Welsh Ministers)” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (6)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (5): inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 366(1), (7).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Modification

Modification: sub-s (3) modified, in relation to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Transfer of Functions

Functions of the Ministers, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

Code of Practice on Environmental Procedures for Flood Defence Operating Authorities (Environment Agency) Approval Order 1996, SI 1996/3061 (made under sub-s (1)).

Water and Sewerage (Conservation, Access and Recreation) (Code of Practice) Order 2000, SI 2000/477.

Water, Animals, Marine Pollution and Environmental Protection (Miscellaneous Revocations) Order 2015, SI 2015/663 (made under sub-s (1)).

[9A Duty of the Agency to cooperate with the Natural Resources Body for Wales]

[The Agency must cooperate with the Natural Resources Body for Wales, and coordinate its activities with those of the Natural Resources Body for Wales, as may be appropriate in the circumstances.]

NOTES

Amendment

Inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 368.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

10 Incidental functions of the Agency [and the Natural Resources Body for Wales]

(1) This section has effect—

- (a) for the purposes of section 37(1) below, as it applies in relation to the Agency; . . .
- [(aa) for the purposes of article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (SI 2012/1903), in relation to the Natural Resources Body for Wales; and]
- (b) for the construction of any other enactment which, by reference to the functions of [an appropriate agency], confers any power on or in relation to [an appropriate agency];

and any reference in this section to “the relevant purposes” is a reference to the purposes described in paragraphs (a)[, (aa)] and (b) above.

(2) For the relevant purposes, the functions of [an appropriate agency] shall be taken to include the protection against pollution of—

- (a) any waters, whether on the surface or underground, which belong to the [appropriate agency] or any water undertaker or from which the [appropriate agency] or any water undertaker is authorised to take water;
- (b) without prejudice to paragraph (a) above, any reservoir which belongs to or is operated by the [appropriate agency] or any water undertaker or which the [appropriate agency] or any water undertaker is proposing to acquire or construct for the purpose of being so operated; and
- (c) any underground strata from which the [appropriate agency] or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under Chapter II of Part II of the 1991 Act (abstraction and impounding).

(3) For the relevant purposes, the functions of [an appropriate agency] shall be taken to include joining with or acting on behalf of one or more relevant undertakers for the purpose of carrying out any works or acquiring any land which at least one of the undertakers with which it joins, or on whose behalf it acts, is authorised to carry out or acquire for the purposes of—

- (a) any function of that undertaker under any enactment; or
- (b) any function which is taken to be a function of that undertaker for the purposes to which section 217 of the Water Industry Act 1991 applies.

(4) For the relevant purposes, the functions of [an appropriate agency] shall be taken to include the provision of supplies of water in bulk, whether or not such supplies are provided for the purposes of or in connection with, the carrying out of any other function of the [appropriate agency].

(5) For the relevant purposes, the functions of [an appropriate agency] shall be taken to include the provision of houses and other buildings for the use of persons employed by the [appropriate agency] and the provision of recreation grounds for persons so employed.

(6) In this section—

“relevant undertaker” means a water undertaker or sewerage undertaker; and

“supply of water in bulk” means a supply of water for distribution by a water undertaker taking the supply.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Section heading: words “and the Natural Resources Body for Wales” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 369(1), (6).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): in para (a) word omitted repealed by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 369(1), (2)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): para (aa) inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 369(1), (2)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): in para (b) words “an appropriate agency” in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 369(1), (2)(c).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): reference to “, (aa)” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 369(1), (2)(d).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): words “an appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 369(1), (3)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): in para (a) words “appropriate agency” in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 369(1), (3)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): in para (b) words “appropriate agency” in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 369(1), (3)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): in para (c) words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 369(1), (3)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): words “an appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 369(1), (4).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-ss (4), (5): words “an appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 369(1), (5)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-ss (4), (5): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 369(1), (5)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Advisory committees

11 . . .

. . .

NOTES

Amendment

Repealed by SI 2002/784, art 2(2).

Date in force: 1 April 2002: see SI 2002/784, art 1(2).

12 . . .

. . .

NOTES**Amendment**

Repealed by SI 2013/755, art 9(1)(a), (2)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

13 . . .

. . .

NOTES**Amendment**

Repealed by SI 2013/755, art 9(1)(b), (2)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

*Flood defence committees***NOTES****Amendment**

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i); for transitional provisions see art 5(2) thereof.

14 Regional flood defence committees

(1) *There shall be committees, known as regional flood defence committees, for the purpose of carrying out the functions which fall to be carried out by such committees by virtue of this Act and the 1991 Act.*

(2) *Subject to Schedule 4 to this Act (which makes provision for the alteration of the boundaries of and the amalgamation of the areas of regional flood defence committees)—*

(a) *there shall be a regional flood defence committee for each of the areas for which there was an old committee immediately before the transfer date; but*

(b) *where under section 165(2) or (3) of the 1991 Act any function of the Agency falls to be carried out at a place beyond the seaward boundaries of the area of any regional flood defence committee, that place shall be assumed for the purposes of this Act and the 1991 Act to be within the area of the regional flood defence committee to whose area of sea where that place is situated is adjacent.*

(3) *The Agency shall maintain a principal office for the area of each regional flood defence committee.*

(4) *In this section “old committee” means a regional flood defence committee for the purposes of section 9 of the 1991 Act.*

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i); for transitional provisions see art 5(2) thereof.

15 Composition of regional flood defence committees

(1) *Subject to subsection (2) below, a regional flood defence committee shall consist of the following, none of whom shall be a member of the Agency, that is to say—*

- (a) *a chairman and a number of other members appointed by the relevant Minister;*
- (b) *two members appointed by the Agency;*
- (c) *a number of members appointed by or on behalf of the constituent councils.*

(2) *Any person who immediately before the transfer date is, by virtue of his appointment—*

- (a) *by a Minister of the Crown,*
- (b) *by or on behalf of any council, or*
- (c) *by the National Rivers Authority,*

the chairman or a member of an old committee which, by virtue of section 14 above, is replaced by a new committee shall be treated, on and after that date, for the remainder of the period for which he would, under the terms of his appointment, have held office in relation to the old committee, as if he had been appointed as the chairman or, as the case may be, a member of the new committee, and on the same terms, by that Minister or, as the case may be, by or on behalf of that council or, in the case of a person appointed by the National Rivers Authority, by the Agency.

(3) *Subject to section 16 below and to any order under Schedule 4 to this Act amalgamating the areas of any two or more regional flood defence committees—*

- (a) *the total number of members of a new committee for any area shall be the same as the total number of members of the old committee for that area immediately before the transfer date;*
- (b) *the number of members to be appointed to a new committee for any area by or on behalf of each of the constituent councils or, as the case may be, jointly by or on behalf of more than one of them shall be the same as the number of members of the old committee for that area which fell to be so appointed immediately before the transfer date.*

(4) *In any case where—*

- (a) *the appointment of one or more members of a regional flood defence committee is (by virtue of subsection (3) above or an order under section 16(5) below), to be made jointly by more than one constituent council, and*
- (b) *the councils by whom that appointment is to be made are unable to agree on an appointment,*

the member or members in question shall be appointed by the relevant Minister on behalf of those councils.

(5) *In appointing a person to be the chairman or a member of a regional flood defence committee under subsection (1)(a) or (c) or (4) above the relevant Minister or, as the case may be, a constituent council shall have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the committee.*

(6) *The councils of every county, county borough, metropolitan district or London borough any part of which is in the area of a regional flood defence committee shall be the constituent councils for the regional flood defence committee for that area, and the Common Council of the City of London shall be a constituent council for the regional flood defence committee for any area which comprises any part of the City.*

(7) *In this section—*

“old committee” has the same meaning as in section 14 above;

“new committee” means a regional flood defence committee established under section 14 above;

“the relevant Minister”—

(a) *in relation to the regional flood defence committee for an area the whole or the greater part of which is in Wales, means the Secretary of State; and*

(b) *in relation to any other regional flood defence committee, means the Minister.*

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i).

Transfer of Functions

See further in relation to the transfer of functions under this section to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

16 Change of composition of regional flood defence committee

(1) *The Agency may, in accordance with the following provisions of this section, from time to time make a determination varying the total number of members of a regional flood defence committee.*

(2) *The Agency shall submit any determination under subsection (1) above to the relevant Minister.*

(3) *For the purposes of this section—*

(a) *the total number of members of a regional flood defence committee shall not be less than eleven; and*

- (b) *any determination by the Agency under subsection (1) above that a regional flood defence committee should consist of more than seventeen members shall be provisional and shall take effect only if the relevant Minister makes an order under subsection (4) below.*

(4) *If the Agency submits a provisional determination to the relevant Minister with respect to any regional flood defence committee and he considers that the committee should consist of more than seventeen members, he may by order made by statutory instrument—*

- (a) *confirm it; or*
- (b) *substitute for the number of members determined by the Agency some other number not less than seventeen.*

(5) *Subject to the following provisions of this section, whenever—*

- (a) *the total number of members of a regional flood defence committee is varied under this section, or*
- (b) *the relevant Minister considers it necessary or expedient to make an order under this subsection,*

the relevant Minister shall by order made by statutory instrument specify the number of members to be appointed to the committee by each of the constituent councils.

(6) *An order under subsection (5) above shall relate—*

- (a) *where paragraph (a) of that subsection applies, to times after the coming into force of the variation; and*
- (b) *where paragraph (b) of that subsection applies, to such times as are specified in the order.*

(7) *An order under subsection (5) above shall be so framed that the total number of members appointed under section 15(1)(a) and (b) above is one less than the number of those appointed by or on behalf of constituent councils.*

(8) *For the purpose of determining for the purposes of subsection (5) above the number of persons to be appointed to a regional flood defence committee by or on behalf of each constituent council, the relevant Minister—*

- (a) *if he considers it to be inappropriate that that council should appoint a member of the committee, or*
- (b) *if he considers that one or more members should be appointed jointly by that council and one or more other constituent councils,*

may include provision to that effect in the order.

(9) *In this section—*

“member”, in relation to a regional flood defence committee, includes the chairman of the committee;

“the relevant Minister” has the same meaning as in section 15 above.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i).

Transfer of Functions

See further in relation to the transfer of functions under this section to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

Thames Regional Flood Defence Committee (Amendment) Order 2011, SI 2011/796 (made under sub-ss (5)(b), (8)).

[16A . . .]

[. . .]

NOTES**Amendment**

Inserted by the Water Act 2003, s 67.

Date in force: 1 April 2004: see SI 2004/910, art 2(1)(a).

Repealed by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i).

[16B . . .]

[. . .]

NOTES**Extent**

This section applies to Wales only: see s 16A hereof.

Amendment

Inserted by the Water Act 2003, s 67.

Date in force: 1 April 2004: see SI 2004/910, art 2(1)(a).

Repealed by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i).

17 Local flood defence schemes and local flood defence committees

(1) *A scheme, known as a local flood defence scheme, may be made by the Agency, in accordance with the following provisions of this section—*

- (a) *for the creation in the area of a regional flood defence committee of one or more districts, to be known as local flood defence districts; and*
- (b) *for the constitution, membership, functions and procedure of a committee for each such district, to be known as the local flood defence committee for that district.*

(2) *Any local flood defence scheme which was made under the 1991 Act or continued in force by virtue of paragraph 14(1) of Schedule 2 to the Water Consolidation (Consequential Provisions) Act 1991 and which, immediately before the transfer date, is in force in relation to the area of a regional flood defence committee, shall on and after that date have effect, and may be amended or revoked, as if it were a local flood defence scheme made under this section in relation to that area; and, accordingly, subject to*

any such amendment or revocation—

- (a) any local flood defence district created by that scheme and in being immediately before that date shall be treated, on and after that date, as a local flood defence district created by a scheme under this section in relation to the area of that regional flood defence committee; and
 - (b) any local flood defence committee created by that scheme for any such district and in being immediately before that date shall be treated, on and after that date, as the local flood defence committee for that district.
- (3) A regional flood defence committee may at any time submit to the Agency—
- (a) a local flood defence scheme for any part of their area for which there is then no such scheme in force; or
 - (b) a scheme varying a local flood defence scheme or revoking such a scheme and, if the committee think fit, replacing it with another such scheme;

and references in the following provisions of this section and in section 18 [sections 18 and 18A] below to local flood defence schemes are references to schemes under either of paragraphs (a) and (b) above.

- (4) Before submitting a scheme to the Agency under subsection (3) above, a regional flood defence committee shall consult—
- (a) every local authority any part of whose area will fall within the area to which the scheme is proposed to relate; and
 - (b) such organisations representative of persons interested in flood defence (within the meaning of Part IV of the 1991 Act) or agriculture as the regional flood defence committee consider to be appropriate.

(5) It shall be the duty of the Agency to send any scheme submitted to it under subsection (3) above to one of the Ministers.

- (6) A local flood defence scheme may define a local flood defence district—
- (a) by reference to the districts which were local land drainage districts immediately before 1st September 1989;
 - (b) by reference to the area of the regional flood defence committee in which that district is situated;
 - (c) by reference to a map;

or partly by one of those means and partly by another or others.

(7) A local flood defence scheme may contain incidental, consequential and supplementary provisions.

(8) Either of the Ministers may approve a local flood defence scheme with or without modifications; and any scheme approved under this subsection shall come into force on a date fixed by the Minister approving it.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i).

Sub-s (3): words "section 18" in italics repealed and subsequent words in square brackets substituted by the Water Act 2003, s 66(1), (3).

Date in force (in relation to England and Wales): 1 April 2004: see SI 2004/641, art 3(q).

Date in force (in relation to Scotland): to be appointed: see the Water Act 2003, s 105(3), (5).

Transfer of Functions

See further in relation to the transfer of functions under this section to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

18 Composition of local flood defence schemes

(1) *Subject to subsections (2) and (3) below, a local flood defence scheme shall provide that any local flood defence committee to which it relates shall consist of not less than eleven and not more than fifteen members.*

(2) *A regional flood defence committee may include in a local flood defence scheme which they submit to the Agency a recommendation that a committee to which the scheme relates should consist of a number of members greater than fifteen; and a scheme so submitted shall be taken to provide for the number of members of a committee if it contains a recommendation under this subsection relating to that committee.*

(3) *The power conferred on each of the Ministers by section 17(8) above shall include power to direct that a committee to which a recommendation under subsection (2) above relates shall consist either of the recommended number of members or of some other number of members greater than fifteen.*

(4) *A local flood defence committee shall consist of—*

- (a) *a chairman appointed from among their own members by the regional flood defence committee;*
- (b) *other members appointed by that committee; and*
- (c) *members appointed, in accordance with and subject to the terms of the local flood defence scheme, by or on behalf of constituent councils.*

(5) *The number of members appointed to a local flood defence committee by or on behalf of constituent councils shall be one more than the total number of members appointed by the regional flood defence committee.*

(6) *In appointing a person to be a member of a local flood defence committee, the regional flood defence committee shall have regard to the desirability of appointing a person who has experience of, and has shown capacity in, some matter relevant to the functions of the committee to which he is appointed.*

(7) *Any person who, immediately before the transfer date is, by virtue of an appointment by an old regional committee or by or on behalf of any council, the chairman or a member of a local flood defence committee which is continued in force by virtue of section 17(2) above shall be treated, on and after that date, for the remainder of the period for which he would, under the terms of his appointment, have held office in relation to the local flood defence committee—*

- (a) *as if he had been appointed as such under this section by the regional flood defence committee or, as the case may be, by or on behalf of that council; and*
- (b) *in the case of the chairman, as if he were a member of the regional flood defence committee.*

(8) *The councils of every county, county borough, metropolitan district or London borough any part of which is in a local flood defence district shall be the constituent councils for the local flood defence committee for that district, and the Common Council of the City of London shall be a constituent council for the local flood defence committee of any local flood defence district which comprises any part of the City.*

(9) *In this section “old regional committee” means a regional flood defence committee for the purposes of section 9 of the 1991 Act.*

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i).

Transfer of Functions

See further in relation to the transfer of functions under this section to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

[18A Power to revoke local flood defence schemes]

[(1) *The Secretary of State may by order made by statutory instrument revoke any local flood defence scheme.*

(2) *The power to make an order under this section shall include power to make such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.*

(3) *The provision which may be made under subsection (2) above includes provision altering—*

- (a) *the total number of members of the regional flood defence committee in whose area the local flood defence district created by the scheme was situated; and*
- (b) *the total number of such members to be appointed by the constituent councils of that committee,*

and subsections (7) and (8) of section 16 of this Act shall apply in relation to so much of an order under this section as is made by virtue of this subsection as they apply in relation to an order under subsection (5) of that section.

(4) *Paragraphs 2 to 6 of Schedule 4 to this Act, apart from paragraph 3(3), apply in relation to an order under this section as they apply in relation to an order under that Schedule, reading references there to the relevant Minister as references to the Secretary of State.]*

NOTES

Amendment

Inserted by the Water Act 2003, s 66(1), (2).

Date in force (in relation to England and Wales): 1 April 2004: see SI 2004/641, art 3(q).

Date in force (in relation to Scotland): to be appointed: see the Water Act 2003, s 105(3), (5).

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i).

19 Membership and proceedings of flood defence committees

Schedule 5 to this Act shall have effect in relation to regional flood defence committees and local flood defence committees.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i); for transitional provisions see art 5(2) thereof.

Chapter II **The Scottish Environment Protection Agency**

Establishment of SEPA

20 The Scottish Environment Protection Agency

(1) There shall be a body to be known as the Scottish Environment Protection Agency (in this Act referred to as “SEPA”), for the purpose of carrying out the functions transferred or assigned to it by or under this Act.

(2) Schedule 6 to this Act shall have effect with respect to SEPA.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 12 October 1995: see SI 1995/2649, art 2(a).

[20A General purpose of SEPA]

[(1) SEPA is to carry out the functions conferred on it by or under this Act or any other enactment for the purpose of protecting and improving the environment (including managing natural resources in a sustainable way).

(2) In carrying out its functions for that purpose SEPA must, except to the extent that it would be inconsistent with subsection (1) to do so, contribute to—

- (a) improving the health and well being of people in Scotland, and

(b) achieving sustainable economic growth.

(3) In subsection (1), “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

NOTES

Amendment

Inserted by the Regulatory Reform (Scotland) Act 2014, s 51.

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Transfer of functions, property etc to SEPA

21 Transfer of functions to SEPA

(1) On the transfer date there shall by virtue of this section be transferred to SEPA—

(a) the functions of river purification authorities, that is to say—

(i) . . .

(ii) their functions with respect to water pollution under or by virtue of . . . Part II of the Control of Pollution Act 1974;

(iii) . . .

(iv) . . . and

(v) the functions assigned to them by or under any other enactment apart from this Act;

(b) the functions of waste regulation authorities, that is to say, the functions conferred or imposed on them by or under—

(i) the Control of Pollution (Amendment) Act 1989; or

(ii) Part II of the 1990 Act,

or assigned to them by or under any other enactment apart from this Act;

(c) . . .

(d) . . .

(e) the functions of the chief inspector for Scotland appointed under section 4(2)(b) of the Radioactive Substances Act 1993, that is to say, the functions conferred or imposed on him by or under that Act or assigned to him by or under any other enactment apart from this Act;

(f) . . .

(g) so far as exercisable in relation to Scotland, the functions in relation to improvement notices and prohibition notices under Part I of the Health and Safety at Work etc Act 1974 (in this section referred to as “the 1974 Act”) of inspectors appointed under section 19 of that Act by the Secretary of State in his capacity as enforcing authority responsible in relation to Scotland for the enforcement of the 1906 Act and section 5 of the 1974 Act;

(h) . . .

(i) the functions of the Secretary of State specified in subsection (2) below.

(2) The functions of the Secretary of State mentioned in subsection (1)(i) above are, so far as exercisable in relation to Scotland—

- (a) the functions conferred or imposed on him by virtue of his being, for the purposes of Part I of the 1974 Act, the authority which is by any of the relevant statutory provisions made responsible for the enforcement of the 1906 Act and section 5 of the 1974 Act;
- (b) . . .
- (c) his functions under section 19 of the Clean Air Act 1993 with respect to the creation of smoke control areas by local authorities; and
- (d) his functions under section 30(1) of the Radioactive Substances Act 1993 (power to dispose of radioactive waste).

(3) . . .

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 12 October 1995: see SI 1995/2649, art 2(b).

Amendment

Sub-s (1): paras (a)(i), (iii), (iv) repealed by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (2)(a)(i).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (1): in para (a)(ii) words omitted repealed by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (2)(a)(ii).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (1): paras (c), (d), (f), (h) repealed by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (2)(a)(iii).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (2): para (b) repealed by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (2)(b).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (3): repealed by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

22 Transfer of property, rights and liabilities to SEPA

(1) On the transfer date—

- (a) the property, rights and liabilities of every river purification board shall, by virtue of this paragraph, be transferred to and vested in SEPA;
- (b) any property, rights and liabilities which are the subject of a scheme under this section—
 - (i) made by the Secretary of State; or
 - (ii) made by a local authority and approved by the Secretary of State,shall be transferred to and vested in SEPA by and in accordance with the scheme.

(2) . . .

- (3) ...
- (4) ...
- (5) ...
- (6) ...
- (7) ...
- (8) ...
- (9) Schedule 2 to this Act shall have effect in relation to transfers by or under this section.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 12 October 1995: see SI 1995/2649, art 2(c).

Amendment

Sub-ss (2)–(8): repealed by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

23 ...

...

NOTES

Amendment

Repealed by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (3).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Other functions etc of SEPA

24 ...

...

NOTES

Amendment

Repealed by SSI 2006/181, art 2, Schedule, Pt I.

Date in force: 1 April 2006: see SSI 2006/181, art 1.

25 ...

...

NOTES

Amendment

Repealed by the Flood Risk Management (Scotland) Act 2009, s 96, Sch 3, para 7.

Date in force: 26 November 2009: see SSI 2009/393, art 2, Schedule; for transitional provisions see arts 3–5 thereof.

26 Power of SEPA to purchase land compulsorily

(1) The Secretary of State may authorise SEPA, for the purpose of any of its functions, to purchase land compulsorily.

(2) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 shall apply in relation to the compulsory purchase of land under this section as if this section had been in force immediately before the commencement of that Act and, in relation to such purchase of land, SEPA shall be treated as if it were a local authority within the meaning of that Act.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

27 Power of SEPA to obtain information about land

(1) Where, with a view to performing a function conferred on it by any enactment, SEPA considers that it ought to have information connected with any land, it may serve on one or more of the persons mentioned in subsection (2) below a notice—

- (a) specifying the land, the function and the enactment; and
- (b) requiring the recipient of the notice to furnish to SEPA, within such period of not less than 14 days from the date of service of the notice as is specified in the notice—
 - (i) the nature of his interest in the land; and
 - (ii) the name and address of each person whom he believes is, as respects the land, a person mentioned in subsection (2) below.

(2) The persons referred to in subsection (1) above are—

- (a) the occupier of the land;
- (b) any person—
 - (i) who has an interest in the land as owner, creditor in a heritable security or lessee; or
 - (ii) who directly or indirectly receives rent for the land; and
- (c) any person who, in pursuance of an agreement between himself and a person interested in the land, is authorised to manage the land or to arrange for the letting of it.

(3) A person who—

- (a) fails to comply with the requirements of a notice served on him in pursuance of subsection (1) above; or
- (b) in furnishing any information in compliance with such a notice makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the

standard scale.

[(4) In subsection (1) above, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Sub-s (4): inserted by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 6, para 43(1), (2).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

28 Power of SEPA to promote or oppose private legislation

- (1) SEPA may, where it is satisfied that it is expedient to do so—
 - (a) with the consent of the Secretary of State, petition for the issue of a provisional order under the Private Legislation Procedure (Scotland) Act 1936; or
 - (b) oppose any private legislation in Parliament.
- (2) An application for the consent mentioned in paragraph (a) of subsection (1) above shall be accompanied by a concise summary of the purposes of the order petitioned for.
- (3) In paragraph (b) of subsection (1) above, “private legislation in Parliament” includes—
 - (a) a provisional order and a Confirmation Bill relating to such an order; and
 - (b) any local or personal Bill.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

29 Procedure relating to making of byelaws

The following provisions of the Local Government (Scotland) Act 1973—

- (a) section 202 (procedure etc for byelaws);
- (b) section 202C (revocation of byelaws);
- (c) section 204 (evidence of byelaws),

shall apply in relation to SEPA as they apply in relation to a local authority, provided that in the application of the said section 202 to SEPA for subsection (13) there shall be substituted—

[ISOB

“(13) The Scottish Environment Protection Agency shall send a copy of any byelaws made by it to the proper officer of the local authority for any area to the whole or any part of which the byelaws will apply.”.

/ISOE

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

30 Records held by SEPA

(1) Subject to subsection (3) below—

(a) this section applies to all records (in whatever form or medium)—

(i) transferred to and vested in SEPA by or under section 22 above;

(ii) created or acquired by it in the exercise of any of its functions; or

(iii) otherwise in its keeping:

(b) ...

(c) ...

(d) ...

(e) SEPA—

(i) shall secure that the Keeper has, at all reasonable hours, unrestricted access to the records preserved by it:

(ii) may afford members of the public, free of charge or on payment of reasonable charges, facilities for inspecting and for obtaining copies or extracts from those records.

(2) Nothing in subsection (1)(e)(ii) above permits infringement of copyright or contravention of conditions subject to which records are in SEPA's keeping.

(3) Insofar as any provision of any enactment, being a provision which relates to records of a specific kind, is (but for this subsection) inconsistent with subsection (1) above, that subsection is subject to the provision in question.

[(4) In subsection (3) above, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 12 October 1995: see SI 1995/2649, art 2(e).

Amendment

Sub-s (1): paras (a)–(d) repealed by the Public Records (Scotland) Act 2011, s 14(c).

Date in force: 1 January 2013: see SSI 2012/247, art 2.

Sub-s (4): inserted by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 6, para 43(1), (3).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

General powers and duties

31 Guidance on [SEPA's general purpose and on] sustainable development and other aims and objectives

(1) The Secretary of State shall from time to time give guidance to SEPA with respect to aims and objectives which he considers it appropriate for SEPA to pursue in the performance of its functions.

(2) The guidance given under subsection (1) above must include guidance with respect to the contribution which, having regard to SEPA's responsibilities and resources, the Secretary of State considers it appropriate for SEPA to make, by the performance of its functions, towards attaining the objective of achieving sustainable development.

[(2A) The Scottish Ministers may give guidance to SEPA with respect to the carrying out of its duties under section 20A.]

(3) In performing its functions, SEPA shall have regard to guidance given under this section.

(4) The power to give guidance to SEPA under this section shall be exercisable only after consultation with SEPA and such other bodies or persons as the Secretary of State considers it appropriate to consult in relation to the guidance in question.

(5) A draft of any guidance proposed to be given under this section shall be laid before [the Scottish Parliament] and the guidance shall not be given until after the period of 40 days beginning with the day on which the draft was so laid . . .

(6) If, within the period mentioned in subsection (5) above, [the Scottish Parliament] resolves that the guidance, the draft of which was laid before it, should not be given, the Secretary of State shall not give that guidance.

(7) In reckoning any period of 40 days for the purposes of subsection (5) or (6) above, no account shall be taken of any time during which [the Scottish Parliament] is dissolved or prorogued or . . . adjourned for more than four days.

(8) The Secretary of State shall arrange for any guidance given under this section to be published in such manner as he considers appropriate.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 12 October 1995: see SI 1995/2649, art 2(f).

Amendment

Section heading: words "SEPA's general purpose and on" in square brackets inserted by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (3).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (2A): inserted by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1),

- (2).
 Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.
 Sub-s (5): words “the Scottish Parliament” in square brackets substituted by SI 1999/1820, art 4, Sch 2, Pt I, para 120(1), (2)(a).
 Date in force: 1 July 1999: see SI 1999/1820, art 1(2).
 Sub-s (5): words omitted repealed by SI 1999/1820, art 4, Sch 2, Pt I, para 120(1), (2)(b), Pt IV.
 Date in force: 1 July 1999: see SI 1999/1820, art 1(2).
 Sub-s (6): words “the Scottish Parliament” in square brackets substituted by SI 1999/1820, art 4, Sch 2, Pt I, para 120(1), (2)(a).
 Date in force: 1 July 1999: see SI 1999/1820, art 1(2).
 Sub-s (7): words “the Scottish Parliament” in square brackets substituted by SI 1999/1820, art 4, Sch 2, Pt I, para 120(1), (2)(a).
 Date in force: 1 July 1999: see SI 1999/1820, art 1(2).
 Sub-s (7): words omitted repealed by SI 1999/1820, art 4, Sch 2, Pt I, para 120(1), (2)(c), Pt IV.
 Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

32 . . .

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NOTES

Amendment

- Repealed by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (4).
 Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

[33 General duties as respects the state of the environment and effects of pollution]

- (1) . . .
- (2) SEPA [may], for the purpose—
- (a) of facilitating the carrying out of its . . . functions; or
 - (b) of enabling it to form an opinion of the general state of . . . the environment,
- compile information relating to [the general state of the environment] (whether the information is acquired by SEPA carrying out observations or is obtained in any other way).
- (3) If required by the Secretary of State to do so, SEPA shall—
- (a) carry out assessments (whether generally or for such particular purpose as may be specified in the requirement) of the effect, or likely effect, on the environment of existing or potential levels of pollution of the environment and report its findings to the Secretary of State; or
 - (b) prepare and send to the Secretary of State a report identifying—
 - (i) the options which SEPA considers to be available for preventing or minimising, or remedying or mitigating the effects of, pollution of the environment, whether generally or in cases or circumstances specified in the requirement; and
 - (ii) the costs and benefits of such options as are identified by SEPA pursuant to sub-paragraph (i) above.
- (4) . . .
- (5) . . .

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Section heading: substituted by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (6).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (1): repealed by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (5)(a).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (2): word “may” in square brackets substituted by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (5)(b)(i).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (2): in para (a) words omitted repealed by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (5)(b)(ii).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (2): in para (b) words omitted repealed by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (5)(b)(iii).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (2): words “the general state of the environment” in square brackets substituted by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (5)(b)(iv).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-ss (4), (5): repealed by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (5)(a).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

34 ...

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NOTES

Amendment

Repealed by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (7).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

35 ...

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Amendment

Repealed by the Nature Conservation (Scotland) Act 2004, s 57, Sch 7, para 10(1).

Date in force: 29 November 2004: see SSI 2004/495, art 2.

36 ...

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NOTES

Amendment

Repealed by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (8).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Chapter III

Miscellaneous, General and Supplemental Provisions Relating to the New Agencies [and the Natural Resources Body for Wales]

NOTES

Amendment

Chapter heading: words “and the Natural Resources Body for Wales” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 370.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Additional general powers and duties

37 Incidental general functions

- (1) Each new Agency (that is to say, in this Part, the Agency or SEPA)—
- (a) may do anything which, in its opinion, is calculated to facilitate, or is conducive or incidental to, the carrying out of functions; and
 - (b) without prejudice to the generality of that power, may, for the purposes of, or in connection with, the carrying out of those functions, acquire and dispose of land and other property and carry out such engineering or building operations as it considers appropriate;

and the Agency may institute criminal proceedings in England and Wales.

- (2) It shall be the duty of each new Agency to provide the Secretary of State or the Minister with such advice and assistance as he may request.
- (3) Subject to subsection (4) below, each new Agency may provide for any person, whether in or outside the United Kingdom, advice or assistance, including training facilities, as respects any matter in which that new Agency has skill or experience.
- (4) Without prejudice to any power of either new Agency apart from subsection (3) above to provide advice or assistance of the kind mentioned in that subsection, the power conferred by that subsection shall not be exercised in a case where the person for whom the advice or assistance is provided is outside the United Kingdom, except with the consent in writing of the appropriate Minister which consent may be given subject to such conditions as the Minister giving it thinks fit.
- (5) Each new Agency—
- (a) shall make arrangements for the carrying out of research and related activities (whether by itself or by others) in respect of matters to which its functions relate; and
 - (b) may make the results of any such research or related activities available to any person in return for payment of such fee as it considers appropriate.
- (6) Subsection (5) above shall not be taken as preventing a new Agency from making the results of any research available to the public free of charge whenever it considers it appropriate to do so.
- (7) Each new Agency may by agreement with any person charge that person a fee in respect of work done, or services or facilities provided, as a result of a request made by him for advice or assistance, whether of a general or specific character, in connection with any matter involving or relating to environmental licences.

- (8) Subsection (7) above—
- (a) is without prejudice to the generality of the powers of either new Agency to make charges; but
 - (b) is subject to any such express provision with respect to charging by the new Agency in question as is contained in the other provisions of this Part or in any other enactment.

[(8A) In subsection (8) above, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

- (9) In this section “engineering or building operations”, without prejudice to the generality of that expression, includes—
- (a) the construction, alteration, improvement, maintenance or demolition of any building or structure or of any reservoir, watercourse, dam, weir, well, borehole or other works; and
 - (b) the installation, modification or removal of any machinery or apparatus.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Sub-ss (1), (2), (9): Appointment: 28 July 1995: see SI 1995/1983, art 2.

Sub-ss (3)–(8): Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Sub-s (8A): inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 6, para 43(1), (4).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Transfer of Functions

Functions under sub-ss (2), (4), so far as exercisable by the Welsh Ministers, cease to be exercisable by the Welsh Ministers, by virtue of the Natural Resources Body for Wales (Consequential Provision) Order 2013, SI 2013/1821, art 6.

38 Delegation of functions by Ministers etc to the new Agencies

- (1) Agreements may be made between—
- (a) any Minister of the Crown, and
 - (b) a new Agency,

authorising the new Agency (or any of its employees) to exercise on behalf of that Minister, with or without payment, any eligible function of his.

(2) An agreement under subsection (1) above shall not authorise the new Agency (or any of its employees) to exercise on behalf of a Minister of the Crown any function which consists of a power to make regulations or other instruments of a legislative character or a power to fix fees or charges.

(3) An agreement under this section may provide for any eligible function to which it relates to be exercisable by the new Agency in question (or any of its employees)—

- (a) either wholly or to such extent as may be specified in the agreement;
- (b) either generally or in such cases or areas as may be so specified; or

- (c) either unconditionally or subject to the fulfilment of such conditions as may be so specified.
- (4) Subsection (5) below applies where, by virtue of an agreement under this section, a new Agency (or any of its employees) is authorised to exercise any function of a Minister of the Crown.
- (5) Subject to subsection (6) below, anything done or omitted to be done by the new Agency (or an employee of the new Agency) in, or in connection with, the exercise or purported exercise of the function shall be treated for all purposes as done or omitted to be done by that Minister in his capacity as such.
- (6) Subsection (5) above shall not apply—
- (a) for the purposes of so much of any agreement made between that Minister and the new Agency as relates to the exercise of the function; or
 - (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that subsection.
- (7) An agreement under this section shall not prevent a Minister of the Crown exercising any function to which the agreement relates.
- (8) Where a Minister of the Crown has power to include, in any arrangements which he makes in relation to the performance by him of an eligible function, provision for the making of payments to him—
- (a) by other parties to the arrangements, or
 - (b) by persons who use any facilities or services provided by him pursuant to the arrangements or in relation to whom the function is otherwise exercisable,

he may include in any such arrangements provision for the making of such payments to him or a new Agency in cases where the new Agency (or any of its employees) acts on his behalf by virtue of an agreement under this section.

(9) The power conferred on a Minister of the Crown by subsection (1) above is in addition to any other power by virtue of which functions of his may be exercised by other persons on his behalf.

(10) In this section—

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

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

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

Sub-s (10): definition “enactment” inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 6, para 43(1), (5).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Transfer of Functions

Functions under this section, so far as exercisable by the Welsh Ministers, cease to be exercisable by the Welsh Ministers, by virtue of the Natural Resources Body for Wales (Consequential Provision) Order 2013, SI 2013/1821, art 6.

39 General duty of the *new Agencies* [Agency] to have regard to costs and benefits in exercising powers

(1) *Each new* [The] Agency—

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

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

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

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

Section heading: words “*new Agencies*” in italics repealed and subsequent word in square brackets substituted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (10).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (1): words “*Each new*” in italics repealed and subsequent word in square brackets substituted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (9)(a).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (2): words “*a new*” in italics repealed and subsequent word in square brackets substituted by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (9)(b).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

40 Ministerial directions to the new Agencies

(1) The appropriate Minister may give a new Agency directions of a general or specific character with respect to the carrying out of any of its functions.

(2) The appropriate Minister may give a new Agency such directions of a general or specific character as he considers appropriate for the implementation of—

- (a) any obligations of the United Kingdom under the [EU] Treaties, or
- (b) any international agreement to which the United Kingdom is for the time being a party.

(3) Any direction under subsection (2) above shall be published in such manner as the Minister giving it considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them; and—

- (a) copies of the direction shall be made available to the public; and
- (b) notice shall be given—
 - (i) in the case of a direction given to the Agency, in the London Gazette, or
 - (ii) in the case of a direction given to SEPA, in the Edinburgh Gazette,of the giving of the direction and of where a copy of the direction may be obtained.

(4) The provisions of subsection (3) above shall have effect in relation to any direction given to a new Agency under an enactment other than subsection (2) above for the implementation of—

- (a) any obligations of the United Kingdom under the [EU] Treaties, or
- (b) any international agreement to which the United Kingdom is for the time being a party,

as those provisions have effect in relation to a direction given under subsection (2) above.

(5) In determining—

- (a) any appeal against, or reference or review of, a decision of a new Agency, or
- (b) any application transmitted from a new Agency,

the body or person making the determination shall be bound by any direction given under this section or any other enactment by a Minister of the Crown to the new Agency to the same extent as the new Agency.

(6) Any power to give a direction under this section shall be exercisable, except in an emergency, only after consultation with the new Agency concerned.

(7) Any power of the appropriate Minister to give directions to a new Agency otherwise than by virtue of this section shall be without prejudice to any power to give directions conferred by this section.

(8) It is the duty of a new Agency to comply with any direction which is given to that new Agency by a Minister of the Crown under this section or any other enactment.

[(9) For the purposes of this section, the “appropriate Minister” in relation to the Agency is—

- (a) in any case not falling within paragraph (b), the Secretary of State;
- (b) in the case of a direction under subsection (1)—
 - (i) which would have any effect in Wales, or
 - (ii) which relates to water resources management, water supply, rivers or other watercourses, control of pollution of water resources, sewerage or land drainage, and which would have any effect in the catchment areas of the rivers Dee, Wye and Severn,

the Secretary of State or the Welsh Ministers.

(10) The Secretary of State may give a direction falling within subsection (9)(b) only after consulting the Welsh Ministers.

(11) The Welsh Ministers may give a direction under this section only with the consent of the Secretary of State.]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

Sub-s (2): in para (a) reference to “EU” in square brackets substituted by SI 2011/1043, art 6(1)(a).
Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.

Sub-s (4): in para (a) reference to “EU” in square brackets substituted by SI 2011/1043, art 6(1)(a).
Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.

Sub-ss (9)–(11): inserted in relation to Wales by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 371; a corresponding amendment (inserting sub-s (9)) has been made in relation to Scotland by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 6, para 43(1), (6).

Date in force (in relation to Wales): 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Date in force (in relation to Scotland): 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Transfer of Functions

See further in relation to the exercise of functions under this section by the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Functions under this section: certain functions under this section are transferred, so far as they are exercisable by the Minister of the Crown in or as regards Scotland by virtue of the reservation in the Scotland Act 1998, Sch 5, s D5: the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2008, SI 2008/1776, art 2, Schedule.

Charging schemes

41 Power to make schemes imposing charges

(1) Subject to the following provisions of this section and [sections 41B, 41C and 42] below—

- (a) in the case of any particular licence under Chapter II of Part II of the 1991 Act (abstraction and impounding), [an appropriate agency] may require the payment to it of such charges as may from time to time be prescribed:
- (b) in relation to other environmental licences, there shall be charged by and paid to [the Agency, the Natural Resources Body for Wales or SEPA] such charges as may from time to time be prescribed; . . .
- [(ba) as a means of recovering costs incurred by it in performing functions conferred by the Reservoirs Act 1975 [an appropriate agency] may require the payment to it of such charges as may from time to time be prescribed;]
- (c) *as a means of recovering costs incurred by it in performing functions conferred by regulations under section 62 of the 1990 Act (dangerous or intractable waste) each of the new Agencies may require the payment to it of such charges as may from time to time be prescribed:*
- [(c) as a means of recovering costs incurred by it in performing functions conferred by regulations

made for the purpose of implementing [Directive 2008/98/EC to the extent that it relates to hazardous waste (within the meaning given by Article 3(2) of that Directive)] [an appropriate agency] may require the payment to it of such charges as may from time to time be prescribed;] [. . .

- (d) as a means of recovering costs incurred by it in performing functions conferred by Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste, as amended from time to time, [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;] [. . .
- (e) as a means of recovering costs incurred by it in performing functions conferred by Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants and amending Directive 79/117/EEC as amended from time to time, [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;]
- [(f) as a means of recovering costs incurred by it in performing functions conferred by regulations made for the purposes of implementing Council Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel (as amended from time to time), [an appropriate agency] may require the payment to it of such charges as may from time to time be prescribed;]
- [(f) as a means of recovering costs incurred by it in performing functions conferred by regulations under section 79 of the Climate Change (Scotland) Act 2009 (asp 12), SEPA may require the payment to it of such charges as may from time to time be prescribed;]
- [(g) as a means of recovering costs incurred by it in performing functions conferred by regulations made for the purpose of implementing Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators and waste batteries and accumulators, as amended from time to time, [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;]]
- [(h) as a means of recovering costs incurred by it in performing functions conferred by regulation 8A of the Greenhouse Gas Emissions Trading Scheme (Amendment) and National Inventory Regulations 2005, the Agency may require the payment to it of such charges as may from time to time be prescribed;
- (i) . . .
- (j) . . .]

and in this section “prescribed” means specified in, or determined under, a scheme (in this section referred to as a “charging scheme”) made under this section by the [body] in question.

- (2) As respects environmental licences, charges may be prescribed in respect of—
 - (a) the grant or variation of an environmental licence, or any application for, or for a variation of, such a licence;
 - (b) the subsistence of an environmental licence;
 - (c) the transfer (where permitted) of an environmental licence to another person, or any application for such a transfer;
 - (d) the renewal (where permitted) of an environmental licence, or any application for such a renewal;
 - (e) the surrender (where permitted) of an environmental licence, or any application for such a

surrender; or

- (f) any application for the revocation (where permitted) of an environmental licence;
- [(g) any other approval, consent, consideration or determination carried out by the Agency relating to any obligations of the United Kingdom under the [EU] Treaties or any application for such an approval of consent, consideration or determination].

[(2A) . . .]

(3) A charging scheme may, for the purposes of subsection (2)(b) above, impose—

- (a) a single charge in respect of the whole of any relevant licensed period;
- (b) separate charges in respect of different parts of any such period; or
- (c) both such a single charge and such separate charges;

and in this subsection “relevant licensed period” means the period during which an environmental licence is in force or such part of that period as may be prescribed.

(4) Without prejudice to subsection (7)(a) below, a charging scheme may, as respects environmental licences, provide for different charges to be payable according to—

- (a) the description of environmental licence in question;
- (b) the description of authorised activity in question;
- (c) the scale on which the authorised activity in question is carried on;
- (d) the description or amount of the substance to which the authorised activity in question relates;
- (e) the number of different authorised activities carried on by the same person.

(5) A charging scheme—

- (a) shall specify, in relation to any charge prescribed by the scheme, the description of person who is liable to pay the charge; and
- (b) may provide that it shall be a condition of an environmental licence of any particular description that any charge prescribed by a charging scheme in relation to an environmental licence of that description is paid in accordance with the scheme.

(6) Without prejudice to subsection (5)(b) above, if it appears to [the Agency, the Natural Resources Body for Wales or SEPA] that any charges due and payable to it in respect of the subsistence of an environmental licence have not been paid, it may, in accordance with the appropriate procedure, suspend or revoke the environmental licence to the extent that it authorises the carrying on of an authorised activity.

(7) 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, the charges prescribed by the scheme 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.

(8) If and to the extent that a charging scheme relates to licences under Chapter II of Part II of the 1991 Act (abstraction and impounding), the scheme shall have effect subject to any provision made by or under sections 125 to 130 of that Act (exemption from charges, imposition of special charges for spray irrigation, and charges in respect of abstraction from waters of [Canal & River Trust]).

(9) A new Agency shall not make a charging scheme unless the provisions of the scheme have been approved by the Secretary of State under section 42 below.

[(9A) The Natural Resources Body for Wales may not make a charging scheme unless the provisions of the scheme have been approved by the Welsh Ministers under section 42.]

(10) In this section—

[. . .]

“the appropriate procedure” means such procedure as may be specified or described in regulations made for the purpose by the Secretary of State;

“authorised activity” means any activity to which an environmental licence relates;

[. . .]

[. . .].

[(10A) Any power of the Secretary of State to make regulations under this section is exercisable in relation to Wales only after consultation with the Welsh Ministers.]

(11) Any power to make regulations under this section shall be exercisable by statutory instrument; and a statutory instrument containing any such regulations shall be subject to annulment pursuant to a resolution of either House of Parliament.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment (for the purpose of making schemes imposing charges): 21 September 1995: see SI 1995/1983, art 3.

Appointment (for the purpose of making regulations): 1 February 1996: see SI 1996/186, art 2.

Appointment (for remaining purposes): 1 April 1996: see SI 1996/186, art 3.

Amendment

Sub-s (1): words “sections 41B, 41C and 42” in square brackets substituted by SI 2013/1821, art 16(1), (2).

Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).

Sub-s (1): in para (a) words “an appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 372(1), (2)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): in para (b) words “the Agency, the Natural Resources Body for Wales or SEPA” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 372(1), (2)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings

- see art 10, Sch 7 thereto.
- Sub-s (1): in para (b) word omitted repealed by SI 2007/1711, reg 46(1)(a).
Date in force: 12 July 2007: see SI 2007/1711, reg 1.
- Sub-s (1): para (ba) inserted, in relation to England and Wales, by the Flood and Water Management Act 2010, s 33, Sch 4, para 39.
Date in force: 1 October 2011: see SI 2011/2204, art 3(1)(b), (h).
- Sub-s (1): in para (ba) words “an appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 372(1), (2)(c).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (1): para (c) substituted in relation to England by SI 2005/894, reg 59(1), (2) and in relation to Wales by SI 2005/1806, reg 59(1), (2).
Date in force (in relation to England): 16 July 2005: see SI 2005/894, reg 1(1)(b).
Date in force (in relation to Wales): 16 July 2005: see SI 2005/1806, reg 1(2)(ii).
- Sub-s (1): in para (c) (as substituted in relation to England and Wales) words from “Directive 2008/98/EC” to “of that Directive” in square brackets substituted by SI 2011/988, reg 48(3), Sch 4, Pt 1, para 4(1), (2).
Date in force: 29 March 2011: see SI 2011/988, reg 1(2).
- Sub-s (1): in para (c) (as substituted in relation to England and Wales) words “an appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 372(1), (2)(c).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (1): para (d) and word omitted immediately preceding it inserted by SI 2007/1711, reg 46(1)(b).
Date in force: 12 July 2007: see SI 2007/1711, reg 1.
- Sub-s (1): in para (c) word omitted repealed by SI 2007/3106, reg 9(1)(a).
Date in force: 3 December 2007: see SI 2007/3106, reg 1.
- Sub-s (1): in para (d) words from “the Agency, the” to “Wales or SEPA” in square brackets substituted by SI 2014/861, regs 22.
Date in force: 1 May 2014: see SI 2014/861, reg 1.
- Sub-s (1): para (e) and word omitted immediately preceding it inserted by SI 2007/3106, reg 9(1)(b).
Date in force: 3 December 2007: see SI 2007/3106, reg 1.
- Sub-s (1): in para (d) word omitted repealed by SI 2008/3087, reg 17(1)(a).
Date in force: 25 December 2008: see SI 2008/3087, reg 1.
- Sub-s (1): in para (e) words “the Agency, the Natural Resources Body for Wales or SEPA” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 372(1), (2)(d).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (1): first para (f) inserted by SI 2008/3087, reg 17(1)(b).
Date in force: 25 December 2008: see SI 2008/3087, reg 1.
- Sub-s (1): in first para (f) words “an appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 372(1), (2)(e).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (1): second para (f) inserted, in relation to Scotland, by the Climate Change (Scotland) Act 2009, s 99, Sch 2, para 2.
Date in force: 31 October 2009: see SSI 2009/341, art 2(1), (2)(c).
- Sub-s (1): para (g) inserted by SI 2009/890, art 92, Sch 8, para 1.
Date in force: 5 May 2009: see SI 2009/890, reg 1(2).
- Sub-s (1): in para (g) words “the Agency, the Natural Resources Body for Wales or SEPA” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 372(1), (2)(f).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (1): in para (g) word “prescribed;” in square brackets substituted by SI 2011/2911, reg 4,

- Schedule, paras 21, 22(a).
Date in force: 1 January 2012: see SI 2011/2911, reg 1(1); for transitional provisions see reg 4, Schedule, paras 33–36 thereto.
- Sub-s (1): paras (h)–(j) inserted by SI 2011/2911, reg 4, Schedule, paras 21, 22(a).
Date in force: 1 January 2012: see SI 2011/2911, reg 1(1); for transitional provisions see reg 4, Schedule, paras 33–36 thereto.
- Sub-s (1): paras (i), (j) repealed by SI 2012/2788, reg 4(a).
Date in force: 3 December 2012: see SI 2012/2788, reg 1.
- Sub-s (1): word “body” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 372(1), (2)(g).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (2): para (g) inserted, in relation to Scotland, by SSI 2003/235, reg 21, Sch 6, para 1.
Date in force: 11 April 2003: see SSI 2003/235, reg 1(1); for transitional provisions see reg 20, Sch 5 thereto.
- Sub-s (2): in para (g) reference to “EU” in square brackets substituted by SI 2011/1043, art 6(1)(a).
Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.
- Sub-s (2A): inserted, in relation to England and Wales, by SI 2006/937, reg 3(1), (2).
Date in force: 15 May 2006: see SI 2006/937, reg 1(2).
- Sub-s (2A): repealed by SI 2009/3381, reg 13(1), (2)(a).
Date in force: 6 April 2010: see SI 2009/3381, reg 1(1)(b); for savings see reg 16(2) thereof.
- Sub-s (6): words “the Agency, the Natural Resources Body for Wales or SEPA” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 372(1), (3).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (8): words “Canal & River Trust” in square brackets substituted by SI 2012/1659, art 2(3), Sch 3, Pt 1, para 13.
Date in force: 2 July 2012: see SI 2012/1659, art 1(2); for transitional provision see art 4 thereof.
- Sub-s (9A): inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 372(1), (4).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (10): definition “aircraft operator” (omitted) inserted by SI 2011/2911, reg 4, Schedule, paras 21, 22(b).
Date in force: 1 January 2012: see SI 2011/2911, reg 1(1); for transitional provisions see reg 4, Schedule, paras 33–36 thereto.
- Sub-s (10): definition “aircraft operator” (omitted) repealed by SI 2012/2788, reg 4(b).
Date in force: 3 December 2012: see SI 2012/2788, reg 1.
- Sub-s (10): definition “relevant environmental licence” (omitted) inserted, in relation to England and Wales, by SI 2006/937, reg 3(1), (3).
Date in force: 15 May 2006: see SI 2006/937, reg 1(2).
- Sub-s (10): definition “relevant environmental licence” (omitted) repealed by SI 2009/3381, reg 13(1), (2)(b).
Date in force: 6 April 2010: see SI 2009/3381, reg 1(1)(b); for savings see reg 16(2) thereof.
- Sub-s (10): definition “trading scheme registry” (omitted) inserted by SI 2011/2911, reg 4, Schedule, paras 21, 22(b).
Date in force: 1 January 2012: see SI 2011/2911, reg 1(1); for transitional provisions see reg 4, Schedule, paras 33–36 thereto.
- Sub-s (10): definition “trading scheme registry” (omitted) repealed by SI 2012/2788, reg 4(b).
Date in force: 3 December 2012: see SI 2012/2788, reg 1.
- Sub-s (10A): inserted by SI 2013/1821, art 16(1), (3).
Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).

Transfer of Functions

Functions under this section: certain functions under this section are transferred, so far as they are

exercisable by the Minister of the Crown in or as regards Scotland by virtue of the reservation in the Scotland Act 1998, Sch 5, s D5: the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2008, SI 2008/1776, art 2, Schedule.

Subordinate Legislation

Environmental Licences (Suspension and Revocation) Regulations 1996, SI 1996/508 (made under sub-ss (6), (10)).

[41A Charges in respect of] [the EU greenhouse gas emissions trading scheme]

[(1) Each of the [charging authorities] may require the payment to it of such charges as may from time to time be prescribed—

- (a) as a means of recovering costs incurred by it in performing functions conferred under or by virtue of regulations made for the purpose of implementing the EU ETS Directive;
- (b) in respect of—
 - (i) an application to open an account that, under the [Registries Regulation 2013], is required to be held in a trading scheme registry;
 - (ii) the subsistence of such an account;
 - (iii) the updating of information provided to the Agency in relation to such an account;

and in this section “prescribed” means specified in, or determined under, a scheme (in this section referred to as a “charging scheme”) made under this section by the [charging authority] in question.

(1A) 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, the charges prescribed by the scheme 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.

(1B) 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.

(1C) A [charging authority] may not make a charging scheme unless the provisions of the scheme have been approved by the Secretary of State[, the Welsh Ministers] or the Scottish Ministers under section 42.]

(2) If the Agency—

- (a) proposes to prescribe [charges under subsection (1)(b)], or to amend any provision for such charges included in a charging scheme, and
- (b) notifies [another charging authority] of its proposals,

the Agency and [that other charging authority] shall each include in a charging scheme (subject to approval by the Secretary of State[, the Welsh Ministers] [or the Scottish Ministers under section 42]) provision giving effect to the proposals.

(3) If the Agency revises any proposals of which it has given notification under subsection (2) above, and notifies [the relevant charging authority] accordingly, the obligations imposed by that subsection apply in relation to the proposals as revised.

(4) A notification under subsection (2) or (3) above shall include details of the amount of the proposed charges.

(5) [The Natural Resources Body for Wales and] SEPA shall pass on to the Agency any [charges under subsection (1)(b)] that [they receive].

(6) A charging scheme made by the Agency may require the payment to the Agency of such charges as may from time to time be prescribed in respect of—

- [(a) an application to open an account in a trading scheme registry, other than one that under the [Registries Regulation 2013] is required to be held in that registry;]
- (b) the subsistence of such an account;
- (c) the updating of information provided to the Agency in relation to such an account.]

[(7) In this section—

“charging authority” means the Agency, the Natural Resources Body for Wales or SEPA;

“the Registries Regulation 2013” means Commission Regulation (EU) No 389/2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 290/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011, as amended from time to time; and

“trading scheme registry” means any registry operated by the Agency for the purpose of meeting the obligations of the United Kingdom referred to in Articles 4(3) and 5(1) of the Registries Regulation 2013.]

NOTES

Amendment

Provision heading: substituted by SI 2011/2911, reg 4, Schedule, paras 21, 23(a).

Date in force: 1 January 2012: see SI 2011/2911, reg 1(1); for transitional provisions see reg 4, Schedule, paras 33–36 thereto.

Section heading: words “the EU greenhouse gas emissions trading scheme” in square brackets substituted by SI 2012/2788, reg 5(1), (2).

Date in force: 3 December 2012: see SI 2012/2788, reg 1.

Inserted by SI 2005/925, reg 48, Sch 6, para 1(1), (2).

Date in force: 21 April 2005: see SI 2005/925, reg 1.

Sub-s (1), (1A)–(1C): substituted, for sub-s (1), by SI 2012/2788, reg 5(1), (3).

Date in force: 3 December 2012: see SI 2012/2788, reg 1.

Sub-s (1): words “charging authorities” in square brackets substituted by SI 2013/1821, art 17(1), (2)(a).

Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).

Sub-s (1): in para (b)(i) words “Registries Regulation 2013” in square brackets substituted by SI 2013/3135, reg 13(1), (2).

Date in force: 31 January 2014: see SI 2013/3135, reg 1.

Sub-s (1): words “charging authority” in square brackets substituted by SI 2013/1821, art 17(1), (2)(b).

Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).

- Sub-s (1C): words “charging authority” in square brackets substituted by SI 2013/1821, art 17(1), (3)(a).
Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).
- Sub-s (1C): words “, the Welsh Ministers” in square brackets inserted by SI 2013/1821, art 17(1), (3)(b).
Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).
- Sub-s (2): in para (a) words “charges under subsection (1)(b)” in square brackets substituted by SI 2012/2788, reg 5(1), (4)(a).
Date in force: 3 December 2012: see SI 2012/2788, reg 1.
- Sub-s (2): in para (b) words “another charging authority” in square brackets substituted by SI 2013/1821, art 17(1), (4)(a).
Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).
- Sub-s (2): words “that other charging authority” in square brackets substituted by SI 2013/1821, art 17(1), (4)(b)(i).
Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).
- Sub-s (2): words “, the Welsh Ministers” in square brackets inserted by SI 2013/1821, art 17(1), (4)(b)(ii).
Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).
- Sub-s (2): words “or the Scottish Ministers under section 42” in square brackets substituted by SI 2012/2788, reg 5(1), (4)(b).
Date in force: 3 December 2012: see SI 2012/2788, reg 1.
- Sub-s (3): words “the relevant charging authority” in square brackets substituted by SI 2013/1821, art 17(1), (5).
Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).
- Sub-s (5): words “The Natural Resources Body for Wales and” in square brackets inserted by SI 2013/1821, art 17(1), (6)(a).
Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).
- Sub-s (5): words “charges under subsection (1)(b)” in square brackets substituted by SI 2012/2788, reg 5(1), (5).
Date in force: 3 December 2012: see SI 2012/2788, reg 1.
- Sub-s (5): words “they receive” in square brackets substituted by SI 2013/1821, art 17(1), (6)(b).
Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).
- Sub-s (6): para (a) substituted by SI 2012/2788, reg 5(1), (6).
Date in force: 3 December 2012: see SI 2012/2788, reg 1.
- Sub-s (6): in para (a) words “Registries Regulation 2013” in square brackets substituted by SI 2013/3135, reg 13(1), (2).
Date in force: 31 January 2014: see SI 2013/3135, reg 1.
- Sub-s (7): substituted by SI 2013/3135, reg 13(1), (3).
Date in force: 31 January 2014: see SI 2013/3135, reg 1.

[41B Charging schemes in respect of abstraction and impounding licences: joint charging schemes]

[(1) A charging scheme under section 41 relating to licences under Chapter II of Part II of the 1991 Act may be made by both of the appropriate agencies acting jointly (referred to in this section as a “joint charging scheme”), if that scheme prescribes charges in relation to licences granted within a combined area that—

- (a) is partly in England and partly in Wales; and
 - (b) includes all of, or any part of, the catchment areas of the rivers Dee, Wye and Severn.
- (2) A joint charging scheme must—
- (a) designate the combined area to which it applies; and
 - (b) specify the manner in which the sums recovered by way of charges prescribed by the scheme are to be apportioned between, and paid to, each appropriate agency.
- (3) Subsections (9) and (9A) of section 41 do not apply to joint charging schemes.
- (4) Subject to subsection (5), the appropriate agencies may not make a joint charging scheme unless the provisions of the scheme have been approved under section 42 by the Secretary of State and the Welsh Ministers acting jointly.
- (5) Section 42 applies in relation to joint charging schemes as though references in that section to—
- (a) anything done by or in relation to either the Secretary of State or the Welsh Ministers were references to that thing being done by or in relation to the Secretary of State and the Welsh Ministers acting jointly;
 - (b) a charging authority were references to both of the appropriate agencies acting jointly.
- (6) This section does not affect any power of an appropriate agency to make a charging scheme under section 41.]

NOTES

Amendment

Inserted by SI 2013/1821, art 19.

Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).

[41C Charging schemes in respect of abstraction and impounding licences: cross-border arrangements]

- [(1) An appropriate agency may not make or revise a relevant charging scheme unless it has—
- (a) notified the other appropriate agency of its proposal; and
 - (b) had regard to any information provided by the other appropriate agency relating to costs or expenses—
 - (i) which the other appropriate agency has incurred or expects to incur, and
 - (ii) in respect of which the other appropriate agency considers that the relevant charging scheme should make provision.
- (2) Subsection (1) does not apply to a joint charging scheme made in accordance with section 41B.
- (3) An appropriate agency may not, without the consent of the other appropriate agency, enter into any agreement, or any variation of an agreement, as a result of which it will be liable to incur costs or expenses—
- (a) in respect of which it would expect a relevant charging scheme made by the other appropriate agency (or by both of the appropriate agencies acting jointly) to make provision; and

- (b) which would, if an existing relevant charging scheme were revised to make provision for the purpose of recovering the amount required to meet those costs or expenses in full, result in a significant increase in the charges payable under that charging scheme.

(4) Either appropriate agency may refer the question of whether consent should be given for the purposes of subsection (3) for determination by the Secretary of State and the Welsh Ministers acting jointly.

(5) The Secretary of State and the Welsh Ministers, acting jointly—

- (a) may give guidance to the appropriate agencies as to the exercise of the appropriate agencies' functions under this section;
- (b) must arrange for any guidance given under this subsection to be published in such manner as they consider appropriate.

(6) The appropriate agencies must have regard to any guidance given under subsection (5).

(7) In this section, "relevant charging scheme" means a charging scheme under section 41 which relates to any extent to licences granted under Chapter II of Part II of the 1991 Act in respect of abstractions from, or impounding of, waters in the catchment areas of the rivers Dee, Wye and Severn.]

NOTES

Amendment

Inserted by SI 2013/1821, art 19.

Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).

42 Approval of charging schemes

(1) Before submitting a proposed charging scheme to the Secretary of State [or the Welsh Ministers for approval, a charging authority] shall, in such manner as it considers appropriate for bringing it to the attention of persons likely to be affected by the scheme, publish a notice—

- (a) setting out its proposals; and
- (b) specifying the period within which representations or objections with respect to the proposals may be made to the Secretary of State [or, as the case may be, the Welsh Ministers].

(2) Where any proposed charging scheme has been submitted to the Secretary of State [or the Welsh Ministers for] approval, he [or they] shall, in determining whether or not to approve the scheme or to approve it subject to modifications,—

- (a) consider any representations or objections duly made to him [or them] and not withdrawn; and
- [(b) have regard to—
 - (i) in the case of a charging scheme made under section 41, the matter specified in subsection (3);
 - (ii) in the case of a charging scheme made under section 41A, the matter specified in subsection (3A)].

(3) The matter mentioned in subsection [(2)(b)(i)] above is the desirability of ensuring that, in the case of each of the descriptions of environmental licence specified in the paragraphs of the definition of that expression in section 56 below, the amounts recovered by the [charging authority] in question by way of charges prescribed by charging schemes are the amounts which, taking one year with another, need to be

recovered by that [charging authority] to meet such of the costs and expenses (whether of a revenue or capital nature)—

- (a) which it incurs in carrying out its functions,
- (b) *in the case of environmental licences which are authorisations under section 13(1) of the Radioactive Substances Act 1993—*
 - (i) *which the [Food Standards Agency] incurs in carrying out [its] functions under or in consequence of that Act, and*
 - (ii) . . .
- [(b) which the Food Standards Agency incurs in carrying out its functions in relation to environmental permits under the Environmental Permitting (England and Wales) Regulations 2010 concerning the disposal of radioactive waste within the meaning of those Regulations,]
- [(c) in the case of licences granted by the Agency under Chapter II of Part II of the 1991 Act (abstraction and impounding), which the Natural Resources Body for Wales incurs in carrying out its functions under Part II of that Act or section 6(2A) above in the catchment areas of the rivers Dee, Wye and Severn for purposes connected with abstractions from, or impounding of, waters in England,
- (d) in the case of licences granted by the Natural Resources Body for Wales under Chapter II of Part II of the 1991 Act (abstraction and impounding), which the Agency incurs in carrying out its functions under Part II of that Act or section 6(2) above in the catchment areas of the rivers Dee, Wye and Severn for purposes connected with abstractions from, or impounding of, waters in Wales,]

as the Secretary of State [or, as the case may be, the Welsh Ministers] may consider it appropriate to attribute to the carrying out of those functions in relation to activities to which environmental licences of the description in question relate.

[(3A) The matter mentioned in subsection (2)(b)(ii) above is the desirability of ensuring that the amounts recovered by the [charging authority] in question by way of charges prescribed by charging schemes are the amounts which, taking one year with another, need to be recovered by that new Agency to meet such of the costs and expenses (whether of a revenue or capital nature) which it incurs in carrying out its functions in relation to the matters described in section 41A(1) as the Secretary of State [or, as the case may be, the Welsh Ministers] may consider it appropriate to attribute to the carrying out of those functions.]

(4) Without prejudice to the generality of the expression “costs and expenses”, in determining for the purposes of subsection (3) [or (3A)] above the amounts of the costs and expenses which the Secretary of State considers [or which the Welsh Ministers consider] it appropriate to attribute to the carrying out of a [charging authority’s] or the [Food Standards Agency’s] functions . . . , the Secretary of State [or the Welsh Ministers]—

- (a) shall take into account any determination of the [charging authority’s] financial duties under section 44 below [or (in the case of the Natural Resources Body for Wales) under article 13 of the Natural Resources Body for Wales (Establishment) Order 2012 (SI 2012/1903)]; and
- (b) may include amounts in respect of the depreciation of, and the provision of a return on, such assets as are held by the [charging authority], [or the Food Standards Agency], for purposes connected with the carrying out of the functions in question.

(5) If and to the extent that a charging scheme relates to any licence order under Chapter II of Part II of the 1991 Act (abstraction and impounding), the Secretary of State [or the Welsh Ministers] (as the case

may be)] may consider it appropriate to attribute to the carrying out of [an appropriate agency's] functions in relation to activities to which such a licence relates any costs and expenses incurred by the [appropriate agency] in carrying out any of its functions under Part II of that Act or under section 6(2) [or (2A)] above.

(6) Subsection (5) above is without prejudice to what costs and expenses the Secretary of State [or the Welsh Ministers] may consider it appropriate to attribute to the carrying out of any functions of a [charging authority], the Minister or the Secretary of State in relation to activities to which environmental licences of any particular description relate.

(7) The consent of the Treasury shall be required for the giving of approval to a charging scheme [submitted by the Agency] [or by both of the appropriate agencies acting jointly] . . .

(8) It shall be the duty of a [charging authority] to take such steps as it considers appropriate for bringing the provisions of any charging scheme made by it which is for the time being in force to the attention of persons likely to be affected by them.

(9) If and to the extent that any sums recovered by a [charging authority] by way of charges prescribed by charging schemes may fairly be regarded as so recovered for the purpose of recovering the amount required to meet (whether in whole or in part) [such of the costs and expenses incurred by the Food Standards Agency as fall within subsection (3) above] those sums shall be paid by that [charging authority] [to the Food Standards Agency].

[(9A) The Agency must pay to the Natural Resources Body for Wales any sums which the Agency recovers under a charging scheme made under section 41 (other than a joint charging scheme made in accordance with section 41B) that may fairly be regarded as recovered for the purpose of meeting (in whole or in part) any costs and expenses incurred, or deemed to have been incurred, by the Body in carrying out its functions under Part II of the 1991 Act or section 6(2A) above.

(9B) The Natural Resources Body for Wales must pay to the Agency any sums which the Body recovers under a charging scheme made under section 41 (other than a joint charging scheme made in accordance with section 41B) that may fairly be regarded as recovered for the purpose of meeting (in whole or in part) any costs and expenses incurred by the Agency in carrying out its functions under Part II of the 1991 Act or section 6(2) above, other than costs and expenses that are deemed to have been incurred by the Body.

(9C) Any sums recovered by an appropriate agency by way of charges prescribed by a joint charging scheme made in accordance with section 41B must be apportioned between, and paid to, each appropriate agency in the manner specified by the scheme pursuant to section 41B(2)(b).

(9D) For the purposes of subsections (9A) and (9B), costs or expenses are deemed to have been incurred by the Natural Resources Body for Wales if the liability for those costs or expenses was transferred from the Agency to the Body on 1st April 2013—

- (a) by a transfer scheme made by the Welsh Ministers under section 23 of the Public Bodies Act 2011; or
- (b) by virtue of article 10 of, and paragraph 2 of Schedule 7 to, the Natural Resources Body for Wales (Functions) Order 2013.]

(10) For the purposes of subsection (9) above, any question as to the extent to which any sums may fairly be regarded as recovered for the purpose of recovering the amount required to meet the costs and expenses falling within [that subsection shall be determined by the Secretary of State].

[(10A) Any dispute as to the apportionment or payment of sums under subsection (9A), (9B) or (9C) shall be determined by the Secretary of State and the Welsh Ministers acting jointly.]

[(11) In this section “charging scheme” means a scheme made under section 41 or 41A [and “charging authority” means the body that makes or proposes to make a charging scheme].]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 21 September 1995: see SI 1995/1983, art 3.

Amendment

Sub-s (1): words “or the Welsh Ministers for approval, a charging authority” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (2)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): in para (b) words “or, as the case may be, the Welsh Ministers” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (2)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): words “or the Welsh Ministers for” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (3)(a)(i).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): words “or they” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (3)(a)(ii).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): in para (a) words “or them” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (3)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): para (b) substituted by SI 2012/2788, reg 6(1), (2).

Date in force: 3 December 2012: see SI 2012/2788, reg 1.

Sub-s (3): reference to “(2)(b)(i)” in square brackets substituted by SI 2012/2788, reg 6(1), (3).

Date in force: 3 December 2012: see SI 2012/2788, reg 1.

Sub-s (3): words “charging authority” in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (4)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): para (b) substituted, in relation to England and Wales, by SI 2010/675, reg 107, Sch 26, Pt 1, para 13(1), (3).

Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).

Sub-s (3): in para (b)(i) words “Food Standards Agency” in square brackets substituted by the Food Standards Act 1999, s 40(1), Sch 5, para 44(1), (2)(a).

Date in force: 1 April 2000: see SI 2000/1066, art 2.

Sub-s (3): in para (b)(i) word “its” in square brackets substituted by the Food Standards Act 1999, s 40(1), Sch 5, para 44(1), (2)(a).

Date in force: 1 April 2000: see SI 2000/1066, art 2.

Sub-s (3): para (b)(ii) repealed by the Food Standards Act 1999, s 40(1), (4), Sch 5, para 44(1), (2)(b), Sch 6.

Date in force: 1 April 2000: see SI 2000/1066, art 2.

Sub-s (3): paras (c), (d) inserted by SI 2013/1821, art 20(1), (2).

Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).

- Sub-s (3): words “or, as the case may be, the Welsh Ministers” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (4)(b).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (3A): inserted by SI 2012/2788, reg 6(1), (4).
Date in force: 3 December 2012: see SI 2012/2788, reg 1.
- Sub-s (3A): words “charging authority” in square brackets substituted by SI 2013/1821, art 18(1), (2).
Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).
- Sub-s (3A): words “or, as the case may be, the Welsh Ministers” in square brackets inserted by SI 2013/1821, art 18(1), (3).
Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).
- Sub-s (4): words “or (3A)” in square brackets inserted by SI 2012/2788, reg 6(1), (5)(a).
Date in force: 3 December 2012: see SI 2012/2788, reg 1.
- Sub-s (4): words “or which the Welsh Ministers consider” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (5)(a)(i).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (4): words “charging authority’s” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (5)(a)(ii).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (4): words “Food Standards Agency’s” in square brackets substituted by the Food Standards Act 1999, s 40(1), Sch 5, para 44(1), (3)(a).
Date in force: 1 April 2000: see SI 2000/1066, art 2.
- Sub-s (4): words omitted repealed by SI 2012/2788, reg 6(1), (5)(b).
Date in force: 3 December 2012: see SI 2012/2788, reg 1.
- Sub-s (4): words “or the Welsh Ministers” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (5)(a)(iii).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (4): in para (a) words “charging authority’s” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (5)(b)(i).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (4): in para (a) words from “or (in the” to “Natural Resources Body for Wales (Establishment) Order 2012 (SI 2012/1903)” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (5)(b)(ii).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (4): in para (b) words “charging authority” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (5)(c).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (4): in para (b) words “or the Food Standards Agency” in square brackets substituted by the Food Standards Act 1999, s 40(1), Sch 5, para 44(1), (3)(b).
Date in force: 1 April 2000: see SI 2000/1066, art 2.
- Sub-s (5): words “or the Welsh Ministers (as the case may be)” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (6)(a).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (5): words “an appropriate agency’s” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (6)(b).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings

- see art 10, Sch 7 thereto.
- Sub-s (5): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (6)(c).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (5): words “or (2A)” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (6)(d).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (6): words “or the Welsh Ministers” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (7)(a).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (6): words “charging authority” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (7)(b).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (7): words “submitted by the Agency” in square brackets inserted by SI 1999/1820, art 4, Sch 2, Pt I, para 120(1), (3).
Date in force: 1 July 1999: see SI 1999/1820, art 1(2).
- Sub-s (7): words “or by both of the appropriate agencies acting jointly” in square brackets inserted by SI 2013/1821, art 20(1), (3).
Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).
- Sub-s (7): words omitted repealed by the Food Standards Act 1999, s 40(1), (4), Sch 5, para 44(1), (4), Sch 6.
Date in force: 1 April 2000: see SI 2000/1066, art 2.
- Sub-s (8): words “charging authority” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (8).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (9): words “charging authority” in square brackets in both places they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (8).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (9): words from “such of the” to “subsection (3) above” in square brackets substituted by the Food Standards Act 1999, s 40(1), Sch 5, para 44(1), (5)(a).
Date in force: 1 April 2000: see SI 2000/1066, art 2.
- Sub-s (9): words “to the Food Standards Agency” in square brackets substituted by the Food Standards Act 1999, s 40(1), Sch 5, para 44(1), (5)(b).
Date in force: 1 April 2000: see SI 2000/1066, art 2.
- Sub-ss (9A)–(9D): inserted by SI 2013/1821, art 20(1), (4).
Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).
- Sub-s (10): words “that subsection shall be determined by the Secretary of State” in square brackets substituted by the Food Standards Act 1999, s 40(1), Sch 5, para 44(1), (6).
Date in force: 1 April 2000: see SI 2000/1066, art 2.
- Sub-s (10A): inserted by SI 2013/1821, art 20(1), (5).
Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).
- Sub-s (11): substituted by SI 2012/2788, reg 6(1), (6).
Date in force: 3 December 2012: see SI 2012/2788, reg 1.
- Sub-s (11): words “and “charging authority” means the body that makes or proposes to make a charging scheme” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 373(1), (9).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings

see art 10, Sch 7 thereto.

Transfer of Functions

Functions under this section: references to the Secretary of State in the context of functions carried out under or in consequence of the Radioactive Substances Act 1993 referred to above, so far as exercisable in relation to Wales, shall include the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Functions under this section: certain functions under this section are transferred, so far as they are exercisable by the Minister of the Crown in or as regards Scotland by virtue of the reservation in the Scotland Act 1998, Sch 5, s D5: the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2008, SI 2008/1776, art 2, Schedule.

Incidental power to impose charges

43 Incidental power of the new Agencies to impose charges

[(1)] Without prejudice to the generality of its powers by virtue of section 37(1)(a) above and subject to any such express provision with respect to charging by a new Agency as is contained in the preceding provisions of this Chapter or any other enactment, each new Agency shall have power to fix and recover charges for services and facilities provided in the course of carrying out its functions.

[(2)] In subsection (1) above, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

Sub-s (1): numbered as such, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 6, para 43(1), (7).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (2): inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 6, para 43(1), (7)(b).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

General financial provisions

44 General financial duties

(1) The appropriate Ministers may—

- (a) after consultation with a new Agency, and
- (b) [in the case of the Agency only,] with the approval of the Treasury,

determine the financial duties of that new Agency; and different determinations may be made for different functions and activities of the new Agency.

(2) The appropriate Ministers shall give a new Agency notice of every determination of its financial duties under this section, and such a determination may—

- (a) relate to a period beginning before, on, or after, the date on which it is made;

- (b) contain supplemental provisions; and
- (c) be varied by a subsequent determination.

(3) The appropriate Minister may, after consultation with . . . a new Agency, [and, in the case of the Agency only, after consultation with Treasury,] give a direction to that new Agency requiring it to pay to him an amount equal to the whole or such part as may be specified in the direction of any sum, or any sum of a description, so specified which is or has been received by that new Agency.

(4) Where it appears to the appropriate Minister that a new Agency has a surplus, whether on capital or revenue account, he may, after consultation with the Treasury [(in the case of the Agency only)] and the new Agency, direct the new Agency to pay to him such amount not exceeding the amount of that surplus as may be specified in the direction.

(5) In the case of the Agency—

- (a) subsection (1) above is subject to section 118 of the 1991 Act (special duties with respect to flood defence revenue);
- (b) subsection (3) above is subject to sections 118(1)(a) and 119(1) of the 1991 Act (special duties with respect to flood defence revenue and funds raised for fishery purposes under local enactments); and
- (c) subsection (4) above is subject to sections 118(1)(b) and 119(2) of the 1991 Act (which provide for flood defence revenue and certain funds raised under local enactments to be disregarded in determining whether there is a surplus).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

Sub-s (1): in para (b) words “in the case of the Agency only” in square brackets inserted by SI 1999/1820, art 4, Sch 2, Pt I, para 120(1), (4)(a).

Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Sub-s (3): words “the Treasury and” in italics repealed by SI 1999/1820, art 4, Sch 2, Pt I, para 120(1), (5)(a)(i), Pt IV.

Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Sub-s (3): words “and, in the case of the Agency only, after consultation with Treasury,” in square brackets inserted by SI 1999/1820, art 4, Sch 2, Pt I, para 120(1), (5)(a)(ii).

Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Sub-s (4): words “(in the case of the Agency only)” in square brackets inserted by SI 1999/1820, art 4, Sch 2, Pt I, para 120(1), (5)(b).

Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Transfer of Functions

Functions under this section, so far as exercisable by the Welsh Ministers, cease to be exercisable by the Welsh Ministers, by virtue of the Natural Resources Body for Wales (Consequential Provision) Order 2013, SI 2013/1821, art 6.

45 Accounts and records

(1) Each new Agency shall—

- (a) keep proper accounts and proper accounting records; and
- (b) prepare in respect of each accounting year a statement of accounts giving a true and fair view of the state of affairs and the income and expenditure of the new Agency.

(2) Every statement of accounts prepared by a new Agency in accordance with this section shall comply with any requirement which the appropriate Ministers have, [in the case of the Agency only,] with the consent of the Treasury, notified in writing to the new Agency and which relates to any of the following matters, namely—

- (a) the information to be contained in the statement;
- (b) the manner in which that information is to be presented;
- (c) the methods and principles according to which the statement is to be prepared.

(3) In this section—

“accounting records”, in the case of a new Agency, includes all books, papers and other records of the new Agency relating to, or to matters dealt with in, the accounts required to be kept by virtue of this section;

“accounting year”, subject to subsection (4) below, means, in relation to a new Agency, a financial year.

(4) If the Secretary of State so directs in relation to any accounting year of either new Agency, that accounting year shall end with such date other than the next 31st March as may be specified in the direction; and, where the Secretary of State has given such a direction, the following accounting year shall begin with the day after the date so specified and, subject to any further direction under this subsection, shall end with the next 31st March.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

Sub-s (2): words “in the case of the Agency only,” in square brackets inserted by SI 1999/1820, art 4, Sch 2, Pt I, para 120(1), (4)(b).

Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Transfer of Functions

See further in relation to the transfer of functions under this section to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Function under sub-s (2), so far as exercisable by the Welsh Ministers, transferred to the Secretary of State by the Natural Resources Body for Wales (Consequential Provision) Order 2013, SI 2013/1821, art 7.

46 Audit

(1) *The accounts of each new Agency [, with the exception of those accounts of the Agency that relate to a financial year ending on or after 31st March 2004,] shall be audited by an auditor appointed for each accounting year by the Secretary of State.*

- (2) A person shall not be qualified for appointment under subsection (1) above unless—
- (a) he is eligible for appointment as a [statutory auditor under Part 42 of the Companies Act 2006]; and
 - [(b) if the appointment were an appointment as a statutory auditor, he would not be prohibited from acting by virtue of section 1214 of that Act (independence requirement)].
- (3) A copy of—
- (a) any accounts of a new Agency which are audited under subsection (1) above, and
 - (b) the report made on those accounts by the auditor,

shall be sent to each of the appropriate Ministers as soon as reasonably practicable after the report is received by the new Agency; and the Secretary of State shall lay before each House of Parliament a copy of those accounts and that report.

[(3A) The Agency shall send a copy of its accounts in respect of each financial year ending on or after 31st March 2004 to the Comptroller and Auditor General as soon as reasonably practicable after the end of the financial year to which the accounts relate.

(3B) The Comptroller and Auditor General shall examine, certify and report on any accounts sent to him by the Agency under subsection (3A) and shall lay before each House of Parliament a copy of those accounts and his report on them.]

- (4) The Comptroller and Auditor General—
- (a) shall be entitled to inspect the contents of all accounts and accounting records of a new Agency; and
 - (b) may report to the House of Commons the results of any inspection carried out by him under paragraph (a) above;

and section 6 of the National Audit Act 1983 (examinations of economy, efficiency and effectiveness) accordingly applies to each new Agency.

- (5) In this section—
- “accounting records” has the same meaning as in section 45 above;
 - “accounting year” has the same meaning as in section 45 above;
 - “accounts”, in relation to the Agency, includes any statement under section 45 above.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

Repealed, so far as relating to the Scottish Environment Protection Agency, by the Public Finance and Accountability (Scotland) Act 2000, s 26, Sch 4, paras 13(1), (2).

Date in force: 1 April 2000: see SSI 2000/10, art 2(3).

Sub-s (1): words “, with the exception” to “31st March 2004,” in square brackets inserted by SI

2003/1326, art 19(1), (2).

Date in force: 23 May 2003: see SI 2003/1326, art 1.

Sub-s (2): in para (a) words “statutory auditor under Part 42 of the Companies Act 2006” in square brackets substituted by virtue of SI 2008/948, arts 3(1)(a), 6, Sch 1, Pt 1, para 1(ss).

Date in force: 6 April 2008: see SI 2008/948, art 2(2); for transitional provisions and savings see arts 6, 12 thereof.

Sub-s (2): para (b) substituted by SI 2008/948, arts 3(1)(a), 6, Sch 1, Pt 1, para 19.

Date in force: 6 April 2008: see SI 2008/948, art 2(2); for transitional provisions and savings see arts 6, 12 thereof.

Sub-ss (3A), (3B): inserted by SI 2003/1326, art 19(1), (3).

Date in force: 23 May 2003: see SI 2003/1326, art 1.

Transfer of Functions

See further in relation to the transfer of functions under this section by the National Assembly for Wales, the requirement under sub-s (3) for the Environment Agency to send documents to the Assembly, and the exercise of functions under sub-s (4) by the Auditor General for Wales: the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Functions under sub-s (4), so far as exercisable by the Auditor General for Wales, cease to be exercisable by the Auditor General for Wales, by virtue of the Natural Resources Body for Wales (Consequential Provision) Order 2013, SI 2013/1821, art 10.

[46A Audit: SEPA]

[(1) SEPA shall send the statement of accounts for each accounting year to the Scottish Ministers by such time as they may direct.

(2) The Scottish Ministers shall send the statement of accounts to the Auditor General for Scotland for auditing.

(3) In this section, “accounting year” has the same meaning as in section 45 above.]

NOTES

Amendment

Inserted by the Public Finance and Accountability (Scotland) Act 2000, s 26, Sch 4, paras 13(1), (3).

Date in force: 1 April 2000: see SSI 2000/10, art 2(3).

47 Grants to the new Agencies

The appropriate Minister may, [in the case of the Agency only,] with the approval of the Treasury, make to a new Agency grants of such amounts, and on such terms, as he thinks fit.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

Words “in the case of the Agency only,” in square brackets inserted by SI 1999/1820, art 4, Sch 2, Pt I, para 120(1), (4)(c).

Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Transfer of Functions

See further in relation to the exercise of functions under this section by the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2,

Sch 1.

Functions under this section, so far as exercisable by the Welsh Ministers, cease to be exercisable by the Welsh Ministers, by virtue of the Natural Resources Body for Wales (Consequential Provision) Order 2013, SI 2013/1821, art 8.

48 Borrowing powers

(1) Each new Agency shall be entitled to borrow in accordance with the following provisions of this section, but not otherwise.

(2) Subject to [subsections (5) and (5A)] below, each new Agency may—

- (a) with the consent of the appropriate Minister, and
- (b) [in the case of the Agency only,] with the approval of the Treasury,

borrow temporarily in sterling, by way of overdraft or otherwise, from persons other than the appropriate Ministers, such sums as it may require for meeting its obligations and carrying out its functions.

(3) Subject to [subsections (5) and (5A)] below, each new Agency may borrow from the appropriate Minister, by way of temporary loan or otherwise such sums in sterling as it may require for meeting its obligations and carrying out its functions.

(4) Any consent under subsection (2)(a) above may be granted subject to conditions.

(5) The aggregate amount outstanding in respect of the principal sums borrowed under this section by a new Agency shall not at any time exceed—

- (a) in the case of the Agency, £100 million or such greater sum, not exceeding £160 million, as the Ministers may by order specify; . . .
- (b) . . .

[(5A) In any financial year the net amount of sums borrowed by SEPA under this section shall not exceed the amount specified for that year for the purposes of this section in a Budget Act.

(5B) In subsection (5A) above, “net amount” means the amount of sums borrowed in the financial year less any repayments made during that year (otherwise than by way of interest) in respect of sums borrowed in that or any other year.]

(6) The power to make an order under subsection (5) above shall be exercisable by statutory instrument; but no order shall be made under that subsection unless a draft of the order has been laid before, and approved by a resolution of, the House of Commons.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

Sub-ss (2), (3): words “subsections (5) and (5A)” in square brackets substituted by the Public Finance and Accountability (Scotland) Act 2000, s 8, Sch 1, paras 7(1), (2)(a).

Date in force: 1 April 2000: see SSI 2000/10, art 2(3).

Sub-s (2): in para (b) words “in the case of the Agency only,” in square brackets inserted by SI

1999/1820, art 4, Sch 2, Pt I, para 120(1), (4)(a).

Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Sub-s (5): para (b) and word omitted preceding it repealed by the Public Finance and Accountability (Scotland) Act 2000, s 8, Sch 1, paras 7(1), (2)(b).

Date in force: 1 April 2000: see SSI 2000/10, art 2(3).

Sub-ss (5A), (5B): inserted by the Public Finance and Accountability (Scotland) Act 2000, s 8, Sch 1, paras 7(1), (2)(c).

Date in force: 1 April 2000: see SSI 2000/10, art 2(3).

Transfer of Functions

Functions under this section, so far as exercisable by the Welsh Ministers, cease to be exercisable by the Welsh Ministers, by virtue of the Natural Resources Body for Wales (Consequential Provision) Order 2013, SI 2013/1821, art 8.

49 Government loans to the new Agencies

(1) The appropriate Minister may, [in the case of the Agency only,] with the approval of the Treasury, lend to a new Agency any sums which it has power to borrow under section 48(3) above.

(2) Any loan made under this section by one of the appropriate Ministers shall be repaid to him at such times and by such methods, and interest on the loan shall be paid to him at such rates and at such times, as that Minister may [in the case of the Agency only,] with the approval of the Treasury from time to time determine.

(3) *If in any financial year any of the appropriate Ministers lends any sums to a new Agency under this section, he shall—*

(a) *prepare in respect of that financial year an account of the sums so lent by him; and*

(b) *send that account to the Comptroller and Auditor General before the end of September in the following financial year;*

and the form of the account and the manner of preparing it shall be such as the Treasury may direct.

(4) *The Comptroller and Auditor General shall examine, certify and report on each account sent to him under this section and shall lay copies of it and of his report before each House of Parliament.*

(5) *The Treasury may issue to any of the appropriate Ministers—*

(a) *out of the National Loans Fund, or*

(b) *out of money provided by Parliament,*

such sums as are necessary to enable him to make loans to a new Agency under this section; and any sums received by a Minister of the Crown in pursuance of subsection (2) above shall be paid into the National Loans Fund or, as the case may be, the Consolidated Fund.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

Sub-s (1): words "in the case of the Agency only," in square brackets inserted by SI 1999/1820, art 4, Sch 2, Pt I, para 120(1), (4)(c).

Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Sub-s (2): words “in the case of the Agency only,” in square brackets inserted by SI 1999/1820, art 4, Sch 2, Pt I, para 120(1), (4)(d).

Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Sub-ss (3)–(5): repealed, so far as relating to the Scottish Environment Protection Agency, by the Public Finance and Accountability (Scotland) Act 2000, s 8, Sch 1, paras 7(1), (3).

Date in force: 1 April 2000: see SSI 2000/10, art 2(3).

Transfer of Functions

See further in relation to the exercise of functions under this section by the National Assembly for Wales, and the Auditor General for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Functions under this section, so far as exercisable by the Welsh Ministers, cease to be exercisable by the Welsh Ministers, by virtue of the Natural Resources Body for Wales (Consequential Provision) Order 2013, SI 2013/1821, art 8.

Functions under sub-ss (3), (4), so far as exercisable by the Auditor General for Wales, cease to be exercisable by the Auditor General for Wales, by virtue of the Natural Resources Body for Wales (Consequential Provision) Order 2013, SI 2013/1821, art 10.

50 Government guarantees of a new Agency’s borrowing

(1) The appropriate Minister may, [in the case of the Agency only,] with the consent of the Treasury, guarantee, in such manner and on such conditions as he may think fit, the repayment of the principal of, the payment of interest on, and the discharge of any other financial obligation in connection with, any sum which a new Agency borrows from any person.

(2) A Minister who gives a guarantee under this section shall forthwith lay a statement of the guarantee before each House of Parliament.

(3) Where any sum is paid out for fulfilling a guarantee under this section, the Minister who gave the guarantee shall, as soon as reasonably practicable after the end of each financial year (beginning with that in which the sum is paid out and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged), lay before each House of Parliament a statement relating to that sum.

(4) If any sums are paid out in fulfilment of a guarantee under this section, the new Agency which borrowed the sum by reference to which the guarantee was given shall make to the Minister who gave the guarantee, at such times and in such manner as he may from time to time direct,—

- (a) payments of such amounts as he may so direct in or towards repayment of the sums so paid out; and
- (b) payments of interest, at such rate as he may so direct, on what is outstanding for the time being in respect of sums so paid out;

and the consent of the Treasury shall be required for the giving of a direction under this subsection [in the case of the Agency only].

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

Sub-s (1): words “in the case of the Agency only,” in square brackets inserted by SI 1999/1820, art

4, Sch 2, Pt I, para 120(1), (4)(c).

Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Sub-s (4): words “in the case of the Agency only” in square brackets inserted by SI 1999/1820, art 4, Sch 2, Pt I, para 120(1), (6).

Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Transfer of Functions

Functions under this section, so far as exercisable by the Welsh Ministers, cease to be exercisable by the Welsh Ministers, by virtue of the Natural Resources Body for Wales (Consequential Provision) Order 2013, SI 2013/1821, art 8.

Information

51 Provision of information by the new Agencies

(1) A new Agency shall furnish the appropriate Minister with all such information as he may reasonably require relating to—

- (a) the new Agency’s property;
- (b) the carrying out and proposed carrying out of its functions; and
- (c) its responsibilities generally.

[(1A) Nothing in this section authorises the disclosure by SEPA of protected taxpayer information which was obtained by SEPA in connection with a function of Revenue Scotland delegated to it by Revenue Scotland under section 4(1)(b) of the Revenue Scotland and Tax Powers Act 2014 (asp 16).]

(2) Information required under this section shall be furnished in such form and manner, and be accompanied or supplemented by such explanations, as the appropriate Minister may reasonably require.

(3) The information which a new Agency may be required to furnish to the appropriate Minister under this section shall include information which, although it is not in the possession of the new Agency or would not otherwise come into the possession of the new Agency, is information which it is reasonable to require the new Agency to obtain.

(4) A requirement for the purposes of this section shall be contained in a direction which—

- (a) may describe the information to be furnished in such manner as the Minister giving the direction considers appropriate; and
- (b) may require the information to be furnished on a particular occasion, in particular circumstances or from time to time.

(5) For the purposes of this section a new Agency shall—

- (a) permit any person authorised for the purpose by the appropriate Minister to inspect and make copies of the contents of any accounts or other records of the new Agency; and
- (b) give such explanation of them as that person or the appropriate Minister may reasonably require.

[(6) In subsection (1A), “protected taxpayer information” has the meaning given by section 14 of the Revenue Scotland and Tax Powers Act 2014 (asp 16).]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

Sub-s (1A): inserted, in relation to Scotland, by the Revenue Scotland and Tax Powers Act 2014, s 256, Sch 4, para 2(1), (2)(a).

Date in force: 1 January 2015: see SSI 2014/370, art 2, Schedule.

Sub-s (6): inserted, in relation to Scotland, by the Revenue Scotland and Tax Powers Act 2014, s 256, Sch 4, para 2(1), (2)(b).

Date in force: 1 January 2015: see SSI 2014/370, art 2, Schedule.

Transfer of Functions

See further in relation to the exercise of functions under this section by the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

See further in relation to the exercise of functions under this section by the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Functions under this section, so far as exercisable by the Welsh Ministers, cease to be exercisable by the Welsh Ministers, by virtue of the Natural Resources Body for Wales (Consequential Provision) Order 2013, SI 2013/1821, art 8.

52 Annual report

(1) As soon as reasonably practicable after the end of each financial year, each new Agency shall prepare a report on its activities during that year and shall send a copy of that report to each of the appropriate Ministers.

(2) Every such report shall set out any directions under section 40 above which have been given to the new Agency in question during the year to which the report relates, other than directions given under subsection (1) of that section which are identified to that new Agency in writing by the appropriate Minister as being directions the disclosure of which would, in his opinion, be contrary to the interests of national security.

(3) The Secretary of State shall lay a copy of every such report before each House of Parliament and shall arrange for copies of every such report to be published in such manner as he considers appropriate.

(4) A new Agency's annual report shall be in such form and contain such information as may be specified in any direction given to the new Agency by the appropriate Ministers.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Transfer of Functions

See further in relation to the exercise of functions under this section by the National Assembly for Wales, and the requirement under sub-s (1) for the Environment Agency to send documents to the Assembly, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Functions under this section, so far as exercisable by the Welsh Ministers, cease to be exercisable by the Welsh Ministers, by virtue of the Natural Resources Body for Wales (Consequential Provision) Order 2013, SI 2013/1821, art 8.

Supplemental provisions

53 Inquiries and other hearings

(1) Without prejudice to any other provision of this Act or any other enactment by virtue of which an inquiry or other hearing is authorised or required to be held, the appropriate Minister may cause an inquiry or other hearing to be held if it appears to him expedient to do so—

- (a) in connection with any of the functions of a new Agency; or
- (b) in connection with any of his functions in relation to a new Agency.

[(1A) Without prejudice to any other provision of this Act or any other enactment by virtue of which an inquiry or other hearing is authorised or required to be held, the Welsh Ministers may cause an inquiry or other hearing to be held if it appears to them expedient to do so—

- (a) in connection with any of the relevant environmental functions of the Natural Resources Body for Wales; or
- (b) in connection with any of their functions in relation to the relevant environmental functions of that Body.]

(2) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (which contain supplementary provisions with respect to local inquiries held in pursuance of that section) shall apply to inquiries or other hearings under this section or any other enactment—

- (a) in connection with any of the functions of the Agency [or any of the relevant environmental functions of the Natural Resources Body for Wales], or
- (b) in connection with any functions of the Secretary of State or the Minister in relation to the Agency [or any functions of the Welsh Ministers in relation to the relevant environmental functions of the Natural Resources Body for Wales],

as they apply to inquiries under that section, but taking the reference in subsection (4) of that section to a local authority as including a reference to the Agency [or, as the case may be, the Natural Resources Body for Wales].

(3) The provisions of subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (which relate to the holding of local inquiries) shall apply to inquiries or other hearings held under this section or any other enactment—

- (a) in connection with any of the functions of SEPA, or
- (b) in connection with any functions of the Secretary of State in relation to SEPA,

as they apply to inquiries held under that section.

[(4) In this section, “relevant environmental functions” means—

- (a) pollution control functions (within the meaning of section 5); and
- (b) any functions relating to water resources, flood and coastal erosion risk management or fisheries.]

NOTES

Initial Commencement
To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Sub-s (1A): inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 374(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): in para (a) words from “or any of” to “Body for Wales” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 374(1), (3)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): in para (b) words from “or any functions” to “Body for Wales” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 374(1), (3)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): words “or, as the case may be, the Natural Resources Body for Wales” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 374(1), (3)(c).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (4): inserted in relation to Wales by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 374(1), (4); a corresponding amendment has been made in relation to Scotland by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 6, para 43(1), (8).

Date in force (in relation to Wales): 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Date in force (in relation to Scotland): 30 June 2014: see SSI 2014/160, art 2.

Transfer of Functions

See further in relation to the transfer of functions under this section to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Functions under sub-s (1)(b), so far as exercisable by the Welsh Ministers, cease to be exercisable by the Welsh Ministers, and functions under sub-ss (1)(a), (2), so far as exercisable by the Welsh Ministers, are transferred to the Secretary of State by virtue of the Natural Resources Body for Wales (Consequential Provision) Order 2013, SI 2013/1821, art 9.

54 Appearance in legal proceedings

In England and Wales, a person who is authorised by the Agency to prosecute on its behalf in proceedings before a magistrates’ court shall be entitled to prosecute in any such proceedings . . .

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Words omitted repealed by the Legal Services Act 2007, ss 208(1), 210, Sch 21, para 117, Sch 23.

Date in force: 1 January 2010: see SI 2009/3250, art 2(h).

55 Continuity of exercise of functions: the new Agencies

(1) The abolition of—

(a) the National Rivers Authority,

- (b) the London Waste Regulation Authority, or
- (c) a river purification board,

shall not affect the validity of anything done by that Authority or board before the transfer date.

(2) Anything which, at the transfer date, is in the process of being done by or in relation to a transferor in the exercise of, or in connection with, any of the transferred functions may be continued by or in relation to the transferee.

(3) Anything done by or in relation to a transferor before the transfer date in the exercise of, or otherwise in connection with, any of the transferred functions, shall, so far as is required for continuing its effect on and after that date, have effect as if done by or in relation to the transferee.

(4) Subsection (3) above applies in particular to—

- (a) any decision, determination, declaration, designation, agreement or instrument made by a transferor;
- (b) any regulations or byelaws made by a transferor;
- (c) any licence, permission, consent, approval, authorisation, exemption, dispensation or relaxation granted by or to a transferor;
- (d) any notice, direction or certificate given by or to a transferor;
- (e) any application, request, proposal or objection made by or to a transferor;
- (f) any condition or requirement imposed by or on a transferor;
- (g) any fee or charge paid by or to a transferor;
- (h) any appeal allowed by or in favour of or against a transferor;
- (j) any proceedings instituted by or against a transferor.

(5) Any reference in the foregoing provisions of this section to anything done by or in relation to a transferor includes a reference to anything which, by virtue of any enactment, is treated as having been done by or in relation to that transferor.

(6) Any reference to a transferor in any document constituting or relating to anything to which the foregoing provisions of this section apply shall, so far as is required for giving effect to those provisions, be construed as a reference to the transferee.

(7) The foregoing provisions of this section—

- (a) are without prejudice to any provision made by this Act in relation to any particular functions; and
- (b) shall not be construed as continuing in force any contract of employment made by a transferor;

and the Secretary of State may, in relation to any particular functions, by order exclude, modify or supplement any of the foregoing provisions of this section or make such other transitional provisions as he thinks necessary or expedient.

(8) Where, by virtue of any provision of Schedule 15 to this Act, the Minister is the transferor in the case of any functions, he shall have the same powers under subsection (7) above in relation to those

functions as the Secretary of State.

(9) The power to make an order under subsection (7) above shall be exercisable by statutory instrument; and any statutory instrument containing such an order shall be subject to annulment pursuant to a resolution of either House of Parliament.

(10) In this section—

“the transferee”, in the case of any transferred functions, means the new Agency whose functions they become by virtue of any provision made by or under this Act;

“transferred functions” means any functions which, by virtue of any provision made by or under this Act, become functions of a new Agency; and

“transferor” means any body or person any or all of whose functions become, by virtue of any provision made by or under this Act, functions of a new Agency.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Sub-ss (1)–(6): Appointment: 1 April 1996: see SI 1996/186, art 3.

Sub-ss (7)–(10): Appointment: 1 February 1996: see SI 1996/186, art 2.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

56 Interpretation of Part I

(1) In this Part of this Act, except where the context otherwise requires—

...

“the 1990 Act” means the Environmental Protection Act 1990;

“the 1991 Act” means the Water Resources Act 1991;

[“appropriate agency” means the Agency or the Natural Resources Body for Wales;]

“the appropriate Minister”—

(a) in the case of the Agency, means the Secretary of State or the Minister;
and

(b) in the case of SEPA, means the Secretary of State;

“the appropriate Ministers”—

(a) in the case of the Agency, means the Secretary of State and the Minister;
and

(b) in the case of SEPA, means the Secretary of State;

[“the appropriate national authority” means—

- (a) in relation to the Agency, the Secretary of State;
- (b) in relation to the Natural Resources Body for Wales, the Welsh Ministers;]

[“the catchment areas of the rivers Dee, Wye and Severn” has the meaning given by article 1(3) of the National Assembly for Wales (Transfer of Functions) Order 1999;]

“conservancy authority” has the meaning given by section 221(1) of the 1991 Act;

“costs” includes—

- (a) costs to any person; and
- (b) costs to the environment;

“disposal authority”—

- (a) in the application of this Part in relation to the Agency, has the same meaning as it has in Part I of the Control of Pollution Act 1974 by virtue of section 30(1) of that Act; and
- (b) *in the application of this Part in relation to SEPA, has the meaning assigned to it by section 30(2) of that Act,*

[“the environment” means all, or any, of the following media, namely, the air, water and land (and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground);]

“environmental licence”, in the application of this Part in relation to [an appropriate agency], means any of the following—

- (a) registration of a person as a carrier of controlled waste under section 2 of the Control of Pollution (Amendment) Act 1989,

- [(aa) a permit granted by [an appropriate agency] under regulations under section 2 of the Pollution Prevention and Control Act 1999[, other than regulations made for the purpose of implementing the EU ETS Directive],]

- (b) an authorisation under Part I of the 1990 Act, other than any such authorisation granted by a local enforcing authority,

- (c) . . .

- (d) a licence under Chapter II of Part II of the 1991 Act,

- (e) . . .

- (f) . . .

- (g) . . .

- [(h) registration of a person as a broker of or dealer in controlled waste under any provision which gives effect in England and Wales to Article 26(b) of Directive 2008/98/EC of the European Parliament and of the Council on waste,]

- [(j) registration under Schedule 2 to the Environmental Permitting (England and Wales) Regulations 2007 of an establishment or undertaking in relation to a WEEE operation (as defined by paragraph 1 of Schedule 2 to those Regulations),]

[(k) . . .]

[(l) approval of a scheme under regulation 55 of the Waste Electrical and Electronic Regulations 2013 (“the WEEE Regulations”)];

[(m) compliance with the condition in regulation 57(f)(i) of the WEEE Regulations in relation to a scheme mentioned in paragraph (l)];

[(n) approval of an authorised treatment facility or exporter under regulation 61 of the WEEE Regulations]; and

[(o) extension of approval of an exporter under regulation 62 of the WEEE Regulations,]

so far as having effect in relation to England and Wales;

“environmental licence”, in the application of this Part in relation to SEPA, means any of the following—

(a) . . .

[(aa) a permit granted by SEPA under regulations under section 2 of the Pollution Prevention and Control Act 1999]

[(ab) an authorisation under regulations under section 18 of the Regulatory Reform (Scotland) Act 2014,]

(b) registration of a person as a carrier of controlled waste under section 2 of the Control of Pollution (Amendment) Act 1989 [or as a professional collector or transporter of waste under paragraph 12 of Schedule 4 to the Waste Management Licensing (Scotland) Regulations 2011],

(c) an authorisation under Part I of the 1990 Act,

(d) a waste management licence under Part II of that Act,

(e) . . .

(f) registration under the Radioactive Substances Act 1993,

(g) an authorisation under that Act,

[(h) registration of a person as a broker of, or dealer in, controlled waste under the Waste Management Licensing (Scotland) Regulations 2011,]

[(j) registration in respect of an activity falling within paragraph 7, 8(2), 9, 10, 12, 19, 42, 45(1) or (2), 46[, 47 or 51 of Schedule 1] to those Regulations, except where the waste which is the subject of the activity consists of agricultural waste within the meaning of those Regulations,]

[(ja) registration in respect of an activity falling within paragraph 17, 18, 36 or 39 of Schedule 3 to those Regulations, where the waste which is the subject of the activity consists of or includes waste batteries or accumulators to which Directive 2006/66/EC of the European Parliament and of the Council on batteries and accumulators applies, and those batteries or accumulators have been collected in accordance with Article 8 of that Directive,]

[(k) a greenhouse gas emissions permit granted under the Greenhouse Gas Emissions Trading Scheme Regulations 2005,]

(l) approval of a scheme under regulation 41 of the Waste Electrical and Electronic Equipment Regulations 2006 (“the WEEE Regulations”);

(m) compliance with the condition in regulation 43(e)(i) of the WEEE Regulations in relation to a scheme mentioned in paragraph (l);

(n) approval of an authorised treatment facility or exporter under regulation 47 of the WEEE Regulations; and

(o) extension of approval of an exporter under regulation 48 of the WEEE Regulations,]

so far as having effect in relation to Scotland;

[“the EU ETS Directive” means Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emissions allowance trading within the Community and amending Council Directive 96/61/EC, as amended from time to time;]

“flood defence functions”, in relation to [an appropriate agency], has the same meaning as in the 1991 Act;

“harbour authority” has the meaning given by section 221(1) of the 1991 Act;

“local authority”, in the application of this Part in relation to SEPA, means a district or islands council in Scotland;

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“the Ministers” means the Secretary of State and the Minister;

“navigation authority” has the meaning given by section 221(1) of the 1991 Act;

“new Agency” means the Agency or SEPA;

“river purification authority” means a river purification authority within the meaning of the 1951 Act;

“river purification board” means a river purification board established by virtue of section 135 of the Local Government (Scotland) Act 1973;

“the transfer date” means such date as the Secretary of State may by order made by statutory instrument appoint as the transfer date for the purposes of this Part; and different dates may be appointed for the purposes of this Part—

(i) as it applies for or in connection with transfers under or by virtue of Chapter I above, and

(ii) as it applies for or in connection with transfers under or by virtue of Chapter II above;

“waste regulation authority”—

(a) in the application of this Part in relation to the Agency, means any authority in England or Wales which, by virtue of section 30(1) of the 1990 Act, is a waste regulation authority for the purposes of Part II of that Act; and

(b) in the application of this Part in relation to SEPA, means any council which, by virtue of section 30(1)(g) of the 1990 Act, is a waste regulation authority for the purposes of Part II of that Act.

- (2) In relation to any time on or after 1st April 1996—
- (a) subsection (1) above shall have effect as if, in the definition of “local authority”, for the words “district or islands council in Scotland” there were substituted the words “council constituted under section 2 of the Local Government etc (Scotland) Act 1994”; and
 - (b) in section 22(3)(a)(iv) above the reference to an islands council shall be construed as a reference to a council mentioned in section 3(1) of the Local Government etc (Scotland) Act 1994.
- (3) Where by virtue of any provision of this Part any function of a Minister of the Crown is exercisable concurrently by different Ministers, that function shall also be exercisable jointly by any two or more of those Ministers.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Appointed Day

Transfer date for the purposes of Chapter I: 1 April 1996: see SI 1996/234.

Transfer date for the purposes of Chapter II: 1 April 1996: see SI 1996/139.

Amendment

Sub-s (1): definition “the 1951 Act” (omitted) repealed by SSI 2006/181, art 2, Schedule, Pt IV, para 8(1), (3)(a).

Date in force: 1 April 2006: see SSI 2006/181, art 1.

Sub-s (1): definition “appropriate agency” inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 375(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): definition “the appropriate national authority” inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 375(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): definition “the catchment areas of the rivers Dee, Wye and Severn” inserted by SI 2013/1821, art 30.

Date in force: this amendment has retrospective effect as from 1 April 2013: see SI 2013/1821, art 1(3).

Sub-s (1): in definition “disposal authority” para (b) repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (4).

Date in force (in relation to Scotland): 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Date in force (in relation to England and Wales): to be appointed: see the Regulatory Reform (Scotland) Act 2014, s 61(2).

Sub-s (1): definition “the environment” substituted by the Pollution Prevention and Control Act 1999, s 6(1), Sch 2, paras 14, 17.

Date in force (in relation to England and Wales): 21 March 2000: see SI 2000/800, art 2.

Date in force (in relation to Scotland): 29 September 2000: see SSI 2000/322, art 2.

Sub-s (1): in definition “environmental licence”, in relation to an appropriate agency, words “an appropriate agency” in square brackets in the first place they occur substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 375(1), (3)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): in definition “environmental licence”, in relation to an appropriate agency, para (aa)

inserted by SI 2000/1973, reg 39, Sch 10, Pt 1, paras 14, 15.

Date in force: 1 August 2000: see SI 2000/1973, reg 1(1).

Sub-s (1): in definition “environmental licence”, in relation to an appropriate agency, in para (aa) words “an appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 375(1), (3)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): in definition “environmental licence”, in relation to an appropriate agency, in para (aa) words from “, other than regulations” to “EU ETS Directive” in square brackets inserted by SI 2012/2788, reg 7(a)(i).

Date in force: 3 December 2012: see SI 2012/2788, reg 1.

Sub-s (1): in definition “environmental licence”, in relation to an appropriate agency, para (c) repealed by SI 2007/3538, regs 73, 74(2), Sch 21, Pt 1, para 23(1), (2)(a), Sch 23.

Date in force: 6 April 2008: see SI 2007/3538, reg 1(1)(b); for savings see reg 72(2), (10) thereof.

Sub-s (1): in definition “environmental licence”, in relation to an appropriate agency, paras (e)–(g) repealed by SI 2010/675, regs 107, 109(1), Sch 26, Pt 1, para 13(1), (4), Sch 28.

Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).

Sub-s (1): in definition “environmental licence”, in relation to an appropriate agency, para (h) substituted by SI 2011/988, reg 48(3), Sch 4, Pt 1, para 4(1), (3).

Date in force: 29 March 2011: see SI 2011/988, reg 1(2).

Sub-s (1): in definition “environmental licence”, in relation to an appropriate agency, para (j) substituted by SI 2009/3381, reg 13(1), (3).

Date in force: 6 April 2010: see SI 2009/3381, reg 1(1)(b); for savings see reg 16(3) thereof.

Sub-s (1): in definition “environmental licence”, in relation to an appropriate agency, para (k) inserted by SI 2005/925, reg 48, Sch 6, para 1(1), (3).

Date in force: 21 April 2005: see SI 2005/925, reg 1.

Sub-s (1): in definition “environmental licence”, in relation to an appropriate agency, para (k) repealed by SI 2012/2788, reg 7(a)(ii).

Date in force: 3 December 2012: see SI 2012/2788, reg 1.

Sub-s (1): in definition “environmental licence”, in relation to an appropriate agency, paras (l)–(o) inserted by SI 2006/3289, reg 4(1), (2)(a).

Date in force: 2 January 2007: see SI 2006/3289, reg 1(2).

Sub-s (1): in definition “environmental licence”, in relation to an appropriate agency, para (l) substituted by SI 2013/3113, reg 94(1)(a), (2)(a).

Date in force: 1 January 2014: see SI 2013/3113, reg 1(2).

Sub-s (1): in definition “environmental licence”, in relation to an appropriate agency, para (m) substituted by SI 2013/3113, reg 94(1)(b), (2)(b).

Date in force: 1 January 2014: see SI 2013/3113, reg 1(2).

Sub-s (1): in definition “environmental licence”, in relation to an appropriate agency, para (n) substituted by SI 2013/3113, reg 94(1)(c), (2)(c).

Date in force: 1 January 2014: see SI 2013/3113, reg 1(2).

Sub-s (1): in definition “environmental licence”, in relation to an appropriate agency, para (o) substituted by SI 2013/3113, reg 94(1)(d), (2)(d).

Date in force: 1 January 2014: see the Waste Electrical and Electronic Equipment Regulations 2013, reg 1(2).

Sub-s (1): in definition “environmental licence”, in relation to SEPA, para (a) repealed by SSI 2006/181, art 2, Schedule, Pt IV, para 8(1), (3)(b).

Date in force: 1 April 2006: see SSI 2006/181, art 1.

Sub-s (1): in definition “environmental licence”, in relation to SEPA, para (aa) inserted by SSI 2000/323, reg 36, Sch 10, Pt 1, para 5(1), (2).

Date in force: 28 September 2000: see SSI 2000/323, reg 1(1).

Sub-s (1): in definition “environmental licence”, in relation to SEPA, para (ab) inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 1, para 5(1), (2).

Date in force (in relation to Scotland): 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Date in force (in relation to England and Wales): to be appointed: see the Regulatory Reform (Scotland) Act 2014, s 61(2).

Sub-s (1): in definition “environmental licence”, in relation to SEPA, in para (b) words from “or as a” to “Waste Management Licensing (Scotland) Regulations 2011” in square brackets inserted by SSI 2011/226, reg 3(1), (2)(a).

Date in force: 27 March 2011: see SSI 2011/226, reg 1(1).

Sub-s (1): in definition “environmental licence”, in relation to SEPA, para (e) repealed by SSI 2006/181, art 2, Schedule, Pt IV, para 8(1), (3)(b).

Date in force: 1 April 2006: see SSI 2006/181, art 1.

Sub-s (1): in definition “environmental licence”, in relation to SEPA, para (h) substituted by SSI 2011/226, reg 3(1), (2)(b).

Date in force: 27 March 2011: see SSI 2011/226, reg 1(1).

Sub-s (1): in definition “environmental licence”, in relation to SEPA, para (j) substituted by SSI 2006/541, reg 10.

Date in force: 1 December 2006: see SSI 2006/541, reg 1(1).

Sub-s (1): in definition “environmental licence”, in relation to SEPA, in para (j) words “, 47 or 51 of Schedule 1” in square brackets substituted by SSI 2011/226, reg 3(1), (2)(c).

Date in force: 27 March 2011: see SSI 2011/226, reg 1(1).

Sub-s (1): in definition “environmental licence”, in relation to SEPA, para (ja) inserted by SSI 2009/247, reg 5.

Date in force: 6 July 2009: see SSI 2009/247, reg 1(1); for transitional provisions see regs 8–11 thereof.

Sub-s (1): in definition “environmental licence”, in relation to SEPA, para (k) inserted by SI 2005/925, reg 48, Sch 6, para 1(1), (3).

Date in force: 21 April 2005: see SI 2005/925, reg 1.

Sub-s (1): in definition “environmental licence”, in relation to SEPA, paras (l)–(o) inserted by SI 2006/3289, reg 4(1), (2)(b).

Date in force: 2 January 2007: see SI 2006/3289, reg 1(2).

Sub-s (1): definition “the EU ETS Directive” inserted by SI 2012/2788, reg 7(b).

Date in force: 3 December 2012: see SI 2012/2788, reg 1.

Sub-s (1): in definition “flood defence functions” words “an appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 375(1), (3)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Transfer of Functions

Functions of the Ministers, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

Scottish Environment Protection Agency (Transfer Date) Order 1996, SI 1996/139 (made under sub-s (1)).

Environment Agency (Transfer Date) Order 1996, SI 1996/234 (made under sub-ss (1), (3)).

Part II

Contaminated Land and Abandoned Mines

57 Contaminated land

< . . . >

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment (for certain purposes): 21 September 1995: see SI 1995/1983, art 3.

Appointment (in relation to England for remaining purposes): 1 April 2000: see SI 2000/340, art 2(a).

Appointment (in relation to Scotland for certain purposes): 14 July 2000: see SSI 2000/180, art 2(1)(a), (2).

Appointment (in relation to Scotland for remaining purposes): 14 July 2000: see SI 2000/1986, art 2.

Appointment (in relation to Wales for remaining purposes): 15 September 2001: see SI 2001/3211, art 2(a).

Amendment

This section inserts the Environmental Protection Act 1990, ss 78A–78YC.

58 Abandoned mines: England and Wales

< . . . >

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment (for certain purposes): 21 September 1995: see SI 1995/1983, art 3.

Appointment (for remaining purposes): 1 July 1998: see SI 1998/604, art 3.

Amendment

This section inserts the Water Resources Act 1991, ss 91A, 91B.

59 Abandoned mines: Scotland

. . .

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment (for the purpose of making regulations): 12 October 1995: see SI 1995/2649, art 2(i).

Appointment (for remaining purposes): 1 January 1999: see SI 1998/3272, art 2.

Amendment

This section inserts the Control of Pollution Act 1974, ss 30Y, 30Z (which apply to Scotland only).

60 Amendments to sections 89 and 161 of the Water Resources Act 1991

< . . . >

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment (in part): 1 July 1997: see SI 1997/1626, art 2(a); for transitional provisions see art 3

thereof.

Amendment

This section amends the Water Resources Act 1991, s 89.

Repealed in part, in relation to England and Wales, by SI 2010/675, reg 109(1), Sch 28.

Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b)..

Part III National Parks

Purposes of National Parks

61 Purposes of National Parks

(1) . . .

(2) The amendment made by subsection (1) above is without prejudice to the continuing validity of any designation of an area as a National Park under subsection (3) of that section.

(3) The following enactments (which refer to the purposes specified in section 5(1) of the National Parks and Access to the Countryside Act 1949), that is to say—

- (a) sections 6(3) and (4)(g), 11 and 101(3) of that Act, and
- (b) sections 2(5)(b) and 13(4) of the Countryside Act 1968,

shall have effect in accordance with subsection (4) below.

(4) In the application of any provision specified in subsection (3) above, any reference to the purposes specified in subsection (1) of section 5 of the National Parks and Access to the Countryside Act 1949—

- (a) in relation to any particular National Park, shall be construed as a reference to the substituted purposes as from the time when a National Park authority becomes the local planning authority for that Park; and
- (b) in relation to National Parks generally, shall be construed as a reference—
 - (i) to the original purposes, so far as relating to National Parks in the case of which the National Park authority has not become the local planning authority since the coming into force of this section, and
 - (ii) to the substituted purposes, so far as relating to National Parks in the case of which the National Park authority has become the local planning authority since the coming into force of this section.

(5) In subsection (4) above—

“original purposes” means the purposes specified in subsection (1) of section 5 of that Act, as originally enacted;

“substituted purposes” means the purposes specified in that subsection as substituted by subsection (1) above.

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This section does not extend to Scotland: see s 125(8).

Amendment

Sub-s (1): substitutes the National Parks and Access to the Countryside Act 1949, s 5(1).

62 Duty of certain bodies and persons to have regard to the purposes for which National Parks are designated

(1) . . .

(2) The duty imposed by subsection (1) of the section 11A inserted by subsection (1) above shall take effect, in the case of any particular National Park, as from the time when a National Park authority becomes the local planning authority for that Park.

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This section does not extend to Scotland: see s 125(8).

Amendment

Sub-s (1): inserts the National Parks and Access to the Countryside Act 1949, s 11A.

Establishment of National Park authorities

63 Establishment of National Park authorities

(1) The Secretary of State may—

- (a) in the case of any National Park for which there is an existing authority, or
- (b) in connection with the designation of any area as a new such Park,

by order establish an authority (to be known as “a National Park authority”) to carry out in relation to that Park the functions conferred on such an authority by or under this Part.

(2) An order under this section may provide, in relation to any National Park for which there is an existing authority—

- (a) for the existing authority to cease to have any functions in relation to that Park as from the time when a National Park authority becomes the local planning authority for that Park;
- (b) for such (if any) of the functions of the existing authority as, by virtue of this Part, are not as from that time to be functions of the National Park authority for that Park to become functions of the person on whom they would be conferred if the area in question were not in a National Park; and
- (c) for the winding up of the existing authority and for that authority to cease to exist, or to be dissolved, as from such time as may be specified in the order.

(3) Subject to any order under subsection (4) below, where there is a variation of the area of a National Park for which there is or is to be a National Park authority, the Park for which that authority is or

is to be the authority shall be deemed, as from the time when the variation takes effect, to be that area as varied.

(4) Where provision is made for the variation of the area of a National Park for which there is or is to be a National Park authority, the Secretary of State may by order make such transitional provision as he thinks fit with respect to—

- (a) any functions which, in relation to any area that becomes part of the National Park, are by virtue of the variation to become functions of that authority; and
- (b) any functions which, in relation to any area that ceases to be part of the National Park, are by virtue of the variation to become functions of a person other than that authority.

(5) Schedule 7 to this Act shall have effect with respect to National Park authorities.

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This section does not extend to Scotland: see s 125(8).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

National Park Authorities (Wales) Order 1995, SI 1995/2803 (made under sub-ss (1), (2)).

National Park Authorities (Wales) (Amendment) Order 1996, SI 1996/534 (made under sub-ss (1), (2)).

National Park Authorities (Wales) (Amendment No 2) Order 1996, SI 1996/1224 (made under sub-s (1)).

National Park Authorities (England) Order 1996, SI 1996/1243 (made under sub-ss (1), (2)).

National Park Authorities (England) (Amendment) Order 1996, SI 1996/2546 (made under sub-ss (1), (2)).

Litter Control Areas (Amendment) Order 1997, SI 1997/633.

New Forest National Park Authority (Establishment) Order 2005, SI 2005/421 (made under sub-s (1)).

National Park Authorities (England) Order 2006, SI 2006/3165 (made under sub-ss (1), (5)).

National Park Authorities (Wales) (Amendment) Order 2007, SI 2007/3423 (made under sub-ss (1), (5)).

National Park Authorities (Amendment) (England) Order 2009, SI 2009/557 (made under sub-ss (1), (5)).

National Park Authorities (England) (Amendment) Order 2014, SI 2014/571 (made under sub-ss (1), (5)).

National Park Authorities (England) Order 2015, SI 2015/770 (made under sub-ss (1), (2)).

64 National Park authorities in Wales

(1) Where a National Park planning board has been constituted for the area of any particular existing National Park in Wales, the Secretary of State may exercise his power under section 63 above to establish a National Park authority in relation to that National Park by making an order under that section designating for the body corporate constituted as that board a date earlier than 31st March 1997 on which that body—

- (a) shall cease to be a National Park planning board, and

(b) shall be constituted the National Park authority in relation to that National Park,

without affecting its corporate status (and an order made under or by virtue of that section may make provision re-naming that body accordingly).

(2) Any order under—

(a) paragraph 3A of Schedule 17 to the 1972 Act (special planning boards), or

(b) section 2(1B) of the Town and Country Planning Act 1990 (joint planning boards),

relating to the body corporate constituted as the National Park planning board in question shall have effect on and after the designated date for that body as an order under section 63 above relating to that body in its capacity as the National Park authority in relation to the National Park in question.

(3) For the purposes of any order establishing a National Park authority under section 63 above by virtue of subsection (1) above, or any order which, by virtue of subsection (2) above, has effect as an order under that section—

(a) the requirements of paragraph 2(3) of Schedule 7 to this Act with respect to consultation with councils for principal areas shall, by virtue of the establishment of the National Park planning board, be deemed to have been complied with as respects any provision of the order;

(b) in the case of any member of the National Park planning board immediately before the designated date who was holding that office by virtue of his appointment as such by the Secretary of State under and in accordance with paragraph 11 of Schedule 17 to the 1972 Act (which requires prior consultation), the appointment shall, on and after the designated date, have effect for the remainder of the period for which it was made as an appointment as a member of the National Park authority made by the Secretary of State in accordance with paragraph 4(1) of Schedule 7 to this Act;

(c) in the case of any other member of the National Park planning board immediately before the designated date who is on that date a member of a principal council for an area which includes the whole or any part of the National Park in question, his appointment as a member of that board shall, on and after the designated date, have effect for the remainder of the period for which it was made as an appointment as a local authority member of the National Park authority made in accordance with paragraph 2 of that Schedule; and

(d) any other requirement, whether statutory or otherwise, which must be complied with in connection with the establishment of a National Park authority shall be deemed to have been complied with by virtue of the establishment of the National Park planning board;

and, except as provided by paragraphs (b) and (c) above, no person who is a member of the National Park planning board immediately before the designated date shall, by virtue of the order, become a member of the National Park authority.

(4) The functions of a National Park planning board shall include the duty to take such steps as it considers necessary to enable it (that is to say, the body corporate constituted as that board) on being constituted the National Park authority in relation to the National Park in question by an order made by virtue of subsection (1) above, to perform its functions as a National Park authority on and after the designated date; and the functions conferred on such a board by this subsection—

(a) shall be exercisable before (as well as on or after) 1st April 1996; and

(b) are in addition to any other functions which are exercisable by such a board before that date by virtue of paragraph 13 of Schedule 17 to the Local Government (Wales) Act 1994.

(5) The functions of a principal council for an area which includes the whole or any part of the area of

a National Park planning board shall include the duty to take such steps as it considers necessary to enable the body corporate constituted as that board, on being constituted the National Park authority in relation to the National Park in question by an order made by virtue of subsection (1) above, to perform those functions which would, apart from the order, be exercisable by a principal council but which will become functions of that body, as the National Park authority, on the designated date.

(6) Where the Secretary of State—

- (a) has taken any steps with a view to, or otherwise in connection with, the establishment of a National Park planning board for the area of an existing National Park in Wales (“the proposed board”), but
- (b) decides not to proceed with the establishment of the proposed board and to establish instead a National Park authority in relation to that National Park (“the proposed authority”), and
- (c) the proposed authority is, or is to be, established before 31st March 1997,

the doing of anything by or in relation to the Secretary of State (other than the making by the Secretary of State of an instrument of a legislative character) with a view to, or otherwise in connection with, establishing the proposed board shall be treated, as respects the proposed authority, as the doing of any corresponding or reasonably similar thing falling to be done for the purposes of, or otherwise in connection with, the establishment of that authority.

(7) Without prejudice to the generality of subsection (6) above, in any case falling within paragraphs (a) to (c) of that subsection—

- (a) any consultation with a principal council after 15th December 1994 by the Secretary of State as respects the proposed board (whether or not required by or under any enactment) shall be deemed, as respects the proposed authority, to have been carried out for the purposes of the consultation with councils for principal areas required by paragraph 2(3) of Schedule 7 to this Act;
- (b) anything done by or in relation to the Secretary of State for the purposes of the consultation required by paragraph 11 of Schedule 17 to the 1972 Act (appointment of members by Secretary of State) preparatory to the appointment of a person as a member of the proposed board shall be deemed, as respects the proposed authority, to have been done for the purposes of the consultation required by paragraph 4(1) of Schedule 7 to this Act preparatory to the appointment of that person as a member of that authority;
- (c) anything done by or in relation to the Secretary of State (other than the making by the Secretary of State of an instrument of a legislative character) for the purposes of, or otherwise in connection with, any other requirement, whether statutory or otherwise, of a consultative or procedural nature—
 - (i) which relates to a National Park planning board, and
 - (ii) for which there is a corresponding or reasonably similar requirement which relates to a National Park authority,

shall be treated, as respects the proposed authority, as done for the purposes of, or otherwise in connection with, that other corresponding or reasonably similar requirement.

(8) Section 54 of the Local Government (Wales) Act 1994 (powers to make incidental, consequential, transitional or supplemental provision) shall have effect as if this Part were contained in that Act, except that subsection (2)(e) of that section shall have effect as if this Part were contained in an Act passed in the same Session as that Act.

(9) In this section—

“the designated date”, in the case of any body corporate constituted as a National Park planning board which becomes, or is to become, a National Park authority by virtue of this section, means the date designated by virtue of subsection (1) above in the order relating to that body;

“existing National Park” means a National Park in respect of which there was in force on 15th December 1994 an order under section 5 of the National Parks and Access to the Countryside Act 1949 (designation of areas as National Parks);

“National Park planning board” means—

(a) a special planning board constituted by order under paragraph 3A of Schedule 17 to the 1972 Act to discharge, as respects the area of a National Park in Wales, the functions to which Part I of that Schedule applies, or

(b) a joint planning board constituted by order under subsection (1B) of section 2 of the Town and Country Planning Act 1990 for a united district comprising the area of a National Park in Wales.

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This section does not extend to Scotland: see s 125(8).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

National Park Authorities (Wales) Order 1995, SI 1995/2803 (made under sub-ss (7), (8)).

Functions of National Park authorities

65 General purposes and powers

(1) This Part so far as it relates to the establishment and functions of National Park authorities shall have effect for the purposes specified in section 5(1) of the National Parks and Access to the Countryside Act 1949 (purposes of conserving and enhancing the natural beauty, wildlife and cultural heritage of National Parks and of promoting opportunities for the understanding and enjoyment of the special qualities of those Parks by the public).

(2) Sections 37 and 38 of the Countryside Act 1968 (general duties as to the protection of interests of the countryside and the avoidance of pollution) shall apply to National Park authorities as they apply to local authorities.

(3) The functions of a National Park authority in the period (if any) between the time when it is established and the time when it becomes the local planning authority for the relevant Park shall be confined to the taking of such steps as the authority, after consultation with the Secretary of State and any existing authority for that Park, considers appropriate for securing that it is able properly to carry out its functions after that time.

(4) In the application of subsection (3) above in the case of a National Park authority established in relation to a National Park in Wales, the reference to any existing authority for that Park shall have effect

as respects consultation carried out during so much of that period as falls before 1st April 1996 as including a reference to any principal council whose area is wholly or partly comprised in that Park.

(5) The powers of a National Park authority shall include power to do anything which, in the opinion of that authority, is calculated to facilitate, or is conducive or incidental to—

- (a) the accomplishment of the purposes mentioned in subsection (1) above; or
- (b) the carrying out of any functions conferred on it by virtue of any other enactment.

(6) The powers conferred on a National Park authority by subsection (5) above shall not include either—

- (a) power to do anything in contravention of any restriction imposed by virtue of this Part in relation to any express power of the authority; or
- (b) a power to raise money (whether by borrowing or otherwise) in a manner which is not authorised apart from that subsection;

but the things that may be done in exercise of those powers shall not be treated as excluding anything by reason only that it involves the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights.

(7) Schedule 8 to this Act shall have effect with respect to the supplemental and incidental powers of a National Park authority.

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This section does not extend to Scotland: see s 125(8).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

66 National Park Management Plans

(1) Subject to subsection (2) below, every National Park authority shall, within three years after its operational date, prepare and publish a plan, to be known as a National Park Management Plan, which formulates its policy for the management of the relevant Park and for the carrying out of its functions in relation to that Park.

(2) A National Park authority for a Park wholly or mainly comprising any area which, immediately before the authority's operational date, was or was included in an area for which there was a National Park Plan prepared and published under paragraph 18 of Schedule 17 to the 1972 Act (National Park plans) shall not be required to prepare a Management Plan under subsection (1) above if, within six months of that date, it adopts the existing National Park Plan as its Management Plan and publishes notice that it has done so.

(3) Where a National Park authority is proposing to adopt a plan under subsection (2) above, it may review the plan before adopting it and shall do so if the plan would have fallen to be reviewed under paragraph 18 of Schedule 17 to the 1972 Act in the period of twelve months beginning with the authority's operational date.

(4) A National Park authority shall review its National Park Management Plan within the period of five years of its operational date and, after the first review, at intervals of not more than five years.

(5) Where a National Park authority has adopted a plan under subsection (2) above as its National Park Management Plan and has not reviewed that Plan before adopting it, the first review of that Plan under subsection (4) above shall take place no later than the time when the adopted plan would otherwise have fallen to be reviewed under paragraph 18 of Schedule 17 to the 1972 Act.

(6) Where a National Park authority reviews any plan under this section, it shall—

- (a) determine on that review whether it would be expedient to amend the plan and what (if any) amendments would be appropriate;
- (b) make any amendments that it considers appropriate; and
- (c) publish a report on the review specifying any amendments made.

(7) A National Park authority which is proposing to publish, adopt or review any plan under this section shall—

- (a) give notice of the proposal to every principal council whose area is wholly or partly comprised in the relevant Park and, according to whether that Park is in England or in Wales, to [Natural England] or to [the Natural Resources Body for Wales];
- (b) send a copy of the plan, together (where appropriate) with any proposed amendments of the plan, to every body to which notice of the proposal is required to be given by paragraph (a) above, and
- (c) take into consideration any observations made by any such body.

(8) A National Park authority shall send to the Secretary of State a copy of every plan, notice or report which it is required to publish under this section.

(9) In this section “operational date”, in relation to a National Park authority, means the date on which the authority becomes the local planning authority for the relevant Park.

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This section does not extend to Scotland: see s 125(8).

Amendment

Sub-s (7): in para (a) words “Natural England” in square brackets substituted by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 143.

Date in force: 1 October 2006: see SI 2006/2541, art 2.

Sub-s (7): in para (a) words “the Natural Resources Body for Wales” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 376.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

67 National Park authority to be local planning authority

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) ...

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This section does not extend to Scotland: see s 125(8).

Amendment

Sub-s (1): inserts the Town and Country Planning Act 1990, s 4A.

Sub-ss (2)–(4): repealed by the Planning and Compulsory Purchase Act 2004, ss 118(2), 120, Sch 7, para 19(1), (2), Sch 9.

Date in force (for the purpose of making, or making provision by means of, subordinate legislation): 6 August 2004: see SI 2004/2097, art 2.

Date in force (in relation to England for remaining purposes): 28 September 2004: see SI 2004/2202, arts 2(i), (k), 3(c), (d), Sch 1, Pt 1.

Date in force (in relation to Wales for remaining purposes): 15 October 2005: see SI 2005/2847, art 2(f), (g), Sch 1.

Sub-s (5): inserts the Town and Country Planning Act 1990, s 147A.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

68 Planning authority functions under National Parks legislation etc

(1) Where a National Park authority is the local planning authority for any National Park, section 184 of the 1972 Act and paragraph 37 of Schedule 17 to that Act (functions under certain legislation relating to the National Parks and the countryside) shall not apply as respects that Park in relation to any of the functions conferred by or under—

- (a) the National Parks and Access to the Countryside Act 1949 (“the 1949 Act”), or
- (b) the Countryside Act 1968 (“the 1968 Act”),

on a planning authority of any description.

(2) In consequence of subsection (1) above, but subject to subsections (3) to (7) below—

- (a) functions which are conferred on a local planning authority by or under the 1949 Act or the 1968 Act, and the functions conferred on a county planning authority (or, in relation to Wales, a local planning authority) by section 69 of the 1949 Act (suspension of access to avoid risk of fire), shall, as respects the whole or any part of a National Park for which a National Park authority is the local planning authority, be functions of that authority and not of any other authority;

- (b) references in those Acts to a local planning authority whose area consists of or includes the whole or any part of a National Park shall be construed, in relation to any National Park for which a National Park authority is the local planning authority, as references to the National Park authority; and
- (c) other references in those Acts to a local planning authority and the references to a local authority in section 103 of the 1949 Act and sections 10 and 43 to 45 of the 1968 Act (which contain provision applying in relation to local authorities in their capacity as local planning authorities) shall have effect accordingly.

(3) Section 11 of the 1949 Act (which makes provision in relation to a local planning authority that corresponds to provision made by section 65 above in relation to a National Park authority) shall not apply in relation to any National Park authority.

(4) The functions conferred by or under section 12 of the 1949 Act or section 12 of the 1968 Act (facilities for National Parks) which are exercisable by virtue of this section by a National Park authority in a National Park—

- (a) shall be exercisable by that authority outside the relevant Park on any land in the neighbourhood of that Park; but
- (b) shall be so exercisable only under arrangements made with the local planning authority for the area where they are exercised.

(5) Sections 61 to 63 of the 1949 Act (survey of access requirements and action in response to the survey) shall have effect in accordance with subsection (2) above as respects the area of any National Park for which a National Park authority has become the local planning authority—

- (a) in the case of a Park designated after the commencement of this section, as if section 61(1) applied with the substitution for the reference to the commencement of that Act of a reference to the time when that authority became the local planning authority for that Park;
- (b) as if no area were required by virtue of subsection (3) of section 61 of that Act, or of any previous review under that section, to be excluded from any area to be reviewed by virtue of paragraph (a) above; and
- (c) in the case of a Park designated before the commencement of this section, as if—
 - (i) the power (if any) to make a resolution for the purposes of the proviso to that subsection (3) as respects any part of the area of the Park which has not previously been reviewed under that section, and
 - (ii) the functions which, where such a resolution has been so made, are conferred on the authority which made it or on any authority which has conducted a review in pursuance of the resolution,

were a power or, as the case may be, functions of the National Park authority, and not of any other authority.

(6) The following functions, so far as exercisable by a National Park authority in relation to land or countryside in a National Park in England for which that authority is the local planning authority, that is to say—

- (a) those conferred by or under section 89 of the 1949 Act (planting of trees and treatment of derelict land), and
- (b) those conferred by section 10 of the 1968 Act (camping and picnic sites),

shall be exercisable in relation to so much of that Park as is comprised in a district for which there is a district council, concurrently with the National Park authority, by that district council.

(7) For the purposes of any enactment relating to the functions of a district planning authority, the functions of a district council by virtue of subsection (6) above shall be deemed to be conferred on them as a district planning authority and as if the district were the area for which they are such an authority.

(8) The following powers, that is to say—

- (a) those conferred on a local authority by or under section 92 of the 1949 Act (wardens), and
- (b) those conferred on a local authority by or under section 41 of the 1968 Act (byelaws),

so far as they are conferred in relation to any of the functions which by virtue of this section are functions of a National Park authority as respects the relevant Park, shall be exercisable by that authority and also, in the case of those conferred by or under section 41 of the 1968 Act, by a district council in relation to that council's functions by virtue of subsection (6)(b) above, but not by any other authority.

(9) Section 104 of the 1949 Act (general provisions as to appropriation and disposal of land), except subsection (11), shall have effect as if references in that section to a local authority included references to a National Park authority.

(10) For the purposes of any functions conferred on a National Park authority by virtue of this section references in any enactment to the area of the authority shall be construed as references to the relevant Park.

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This section does not extend to Scotland: see s 125(8).

69 Planning authority functions under the Wildlife and Countryside Act 1981

(1) A National Park authority which is the local planning authority for any National Park, and not any other authority, shall have all the functions under the Wildlife and Countryside Act 1981 which are conferred as respects that Park on a planning authority of any description.

(2) Accordingly—

- (a) a National Park authority shall be the relevant authority for the purposes of sections 39, 41 and 50 of that Act (management agreements and duties of agriculture Ministers in relation to the countryside) as respects any land in any National Park for which that authority is the local planning authority; and
- (b) section 52(2) of that Act (construction of references to a local planning authority) shall not apply as respects any National Park for which a National Park authority is the local planning authority.

(3) Section 43 of that Act (maps of National Parks) shall have effect in accordance with the preceding provisions of this section—

- (a) in the case of a National Park designated after the commencement of this section, as if the relevant date for the purposes of that section were the date on which a National Park authority becomes the local planning authority for the Park; and

- (b) in any other case, as if the function of reviewing and revising any map of a part of the Park in question included a power, in pursuance of the review and revisions, to consolidate that map with other maps prepared under that section as respects other parts of that Park.

(4) . . .

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This section does not extend to Scotland: see s 125(8).

Amendment

Sub-s (4): inserts the Wildlife and Countryside Act 1981, s 44(1A).

70 Other statutory functions

In addition to its functions under the enactments mentioned in sections 67 to 69 above and to such of its functions under any other enactment as are conferred by virtue of its being a local planning authority within the meaning of the Town and Country Planning Act 1990, a National Park authority shall have the further miscellaneous functions conferred on it by virtue of Schedule 9 to this Act.

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This section does not extend to Scotland: see s 125(8).

Finances of National Park authorities

71 National Park authorities to be levying bodies

(1) A National Park authority shall have power in respect of every financial year beginning after the establishment of that authority to issue levies to the councils by whom the local authority members of that authority fall to be appointed.

(2) Subject to the following provisions of this section, a levy issued by virtue of this section shall be issued in accordance with regulations under section 74 of the Local Government Finance Act 1988 (power to make regulations authorising a levying body to issue a levy); and, accordingly, a National Park authority shall be deemed to be a levying body within the meaning of that section.

(3) Subject to any maximum specified in or determined in accordance with any regulations under that section 74, the amount of the levies issued by a National Park authority in respect of any financial year shall be equal to the sum by which the aggregate of the amounts specified in subsection (4) below is exceeded by the aggregate of the sums which it estimates it will require in respect of that year for the following purposes, that is to say—

- (a) meeting the expenditure of the authority which will fall to be charged for that year to any revenue account;
- (b) making such provision as may be appropriate for meeting contingencies the expenditure on which would fall to be so charged;
- (c) securing the availability to the authority of adequate working balances on its revenue

accounts; and

- (d) providing the authority with the funds required for covering any deficit carried forward from a previous financial year in any revenue account.
- (4) The amounts mentioned in subsection (3) above in relation to any financial year are—
- (a) any amounts to be received by the authority in respect of that year by way of grant under section 72 below;
 - (b) the authority's estimate of the amounts which are likely for that year to be credited to any revenue account in respect of sums payable to the authority for things done in the course of, or in connection with, the carrying out of its functions; and
 - (c) the authority's estimate of the amounts not falling within paragraph (a) or (b) above which apart from this section are, or are likely to be, available to it for that year for the purposes mentioned in subsection (3) above.

(5) Where agreement as to the apportionment of the amount to be raised by a National Park authority in respect of any financial year by way of levies is entered into, before 1st December in the immediately preceding financial year, by all the authorities to whom the levies in respect of that year may be issued by that authority, that amount shall be apportioned between those authorities in accordance with the agreement, instead of in accordance with any provision made by virtue of that section 74.

(6) Regulations under that section 74 may include provision for requiring an authority to anticipate a levy by virtue of this section when making any calculations which fall, for the financial year following that in which any National Park authority is established, to be made (whether originally or by way of substitute) under section [31A or 42A (calculation of council tax requirement by authorities in England) or section 32 or 42 (calculation of budget requirement by authorities in Wales) of the Local Government Finance Act 1992].

(7) A National Park authority shall not by virtue of this section be a local authority within the meaning of the Town and Country Planning Act 1990.

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This section does not extend to Scotland: see s 125(8).

Amendment

Sub-s (6): words from "31A or 42A" to "Local Government Finance Act 1992" in square brackets substituted by the Localism Act 2011, s 79, Sch 7, para 32.

Date in force: 3 December 2011: see SI 2011/2896, art 2(g), (i).

72 National Park grant

(1) The Secretary of State may make grants to a National Park authority for such purposes, of such amounts and on such terms and such conditions as he thinks fit.

(2) Before determining the amount of any grant which he proposes to make to a National Park authority under this section, or the purpose for which it is to be made, the Secretary of State shall consult, according to whether the relevant Park is in England or in Wales, either [Natural England] or [the Natural Resources Body for Wales].

(3) The consent of the Treasury shall be required for the making of a grant under this section.

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This section does not extend to Scotland: see s 125(8).

Amendment

Sub-s (2): words “Natural England” in square brackets substituted by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 144.

Date in force: 1 October 2006: see SI 2006/2541, art 2.

Sub-s (2): words “the Natural Resources Body for Wales” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 376.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Transfer of Functions

Functions of the Secretary of State and the Treasury, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

73 . . .

. . .

NOTES

Amendment

Repealed by the Local Government Act 2003, s 127(2), Sch 8, Pt 1.

Date in force (in relation to England): 1 April 2004: see SI 2003/2938, art 7(e)(vi).

Date in force (in relation to Wales): 27 November 2003 (only for the purpose of and in relation to financial years beginning on or after 1 April 2004): see SI 2003/3034, art 2, Sch 1, Pt I.

74 Validation of certain grants paid to local authorities in respect of expenditure relating to National Parks

(1) No payment made for any year beginning on or after 1st April 1990 and ending on or before 31st March 1996 by the Secretary of State by way of grant to the council of a county or a metropolitan district in respect of the council's expenditure or estimated expenditure in connection with National Parks shall be regarded as made otherwise than under and in accordance with the relevant enactments by reason only of—

- (a) the aggregate amount of such grants for the year to such councils not having been duly prescribed;
- (b) the method of determining the proportion of such aggregate amount payable to that council not having been duly prescribed; or
- (c) payment of the grant being, or having been, made—
 - (i) otherwise than in accordance with an approved Rate Support Grant Report or such a Report as varied by an approved supplementary report for the year; or
 - (ii) without there being an approved Rate Support Grant Report for the year.

(2) Any reference in this section to a payment by way of grant made under and in accordance with the relevant enactments is a reference to a payment of grant made under section 7 of the Local Government Act 1974 (supplementary grants towards expenditure with respect to National Parks) in accordance with the provisions of that section and those of section 60 or 61 of the Local Government, Planning and Land Act 1980 (rate support grant reports and supplementary reports) as they apply in relation to grants under the said section 7.

(3) In this section—

“approved Rate Support Grant Report” means a Rate Support Grant Report which has been laid before and approved by a resolution of the House of Commons;

“approved supplementary report” means a supplementary report which has been laid before and approved by a resolution of the House of Commons;

“duly prescribed” means prescribed by a Rate Support Grant Report or a supplementary report;

“Rate Support Grant Report” means a Rate Support Grant Report made under section 60 of the Local Government, Planning and Land Act 1980;

“supplementary report” means a supplementary report made under section 61 of that Act; and

“year” means a period of 12 months beginning with 1st April.

NOTES

Initial Commencement

Royal Assent

Royal Assent: 19 July 1995: see s 125(3).

Extent

This section does not extend to Scotland: see s 125(8).

Supplemental provisions

75 Powers to make orders

(1) This section applies to every power of the Secretary of State under the preceding provisions of this Part to make an order.

(2) The powers to which this section applies shall, in each case, be exercisable by statutory instrument; and, except in the case of a statutory instrument made by virtue of section 64 above which only—

- (a) designates a date,
- (b) specifies a time for the purposes of section 4A of the Town and Country Planning Act 1990,
- (c) renames a body,
- (d) makes provision under paragraph 2 of Schedule 7 to this Act—
 - (i) for excluding a council from the councils by whom the local authority members of a National Park authority are to be appointed, or
 - (ii) for so increasing the number of local authority members of a National Park authority to be appointed by any council as to secure that the number of local authority members of that authority remains unchanged notwithstanding any such exclusion of a council, or

(e) makes provision under section 63(2) above,

any such statutory instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3) The powers to which this section applies shall, in each case, include power to make such incidental, supplemental, consequential and transitional provision as the Secretary of State thinks necessary or expedient.

(4) A power of the Secretary of State by an order under this Part to make incidental, supplemental, consequential or transitional provision shall include power for any incidental, supplemental, consequential or, as the case may be, transitional purpose—

- (a) to apply with or without modifications,
- (b) to extend, exclude or modify, or
- (c) to repeal or revoke with or without savings,

any enactment or any instrument made under any enactment.

(5) The provision that may be made for incidental, supplemental, consequential or transitional purposes in the case of any order under this Part which—

- (a) establishes a National Park authority or winds up the existing authority for any National Park, or
- (b) otherwise has the effect of transferring functions from one person to another or of providing for functions to become exercisable concurrently by two or more persons or to cease to be so exercisable,

shall include provision for the transfer of property, rights and liabilities from one person to another.

(6) A power of the Secretary of State under this Part to provide by order for the transfer of any property, rights or liabilities, or to make transitional provision in connection with any such transfer or with any order by which functions become or cease to be exercisable by any authority, shall include power to provide, in particular—

- (a) for the management and custody of any transferred property (whether real or personal);
- (b) for any liabilities transferred to include liabilities under any enactment;
- (c) for legal proceedings commenced by or against any person to be continued by or against a person to whom property, rights or liabilities are transferred or, as the case may be, any authority by whom any functions are to become exercisable;
- (d) for the transfer of staff, compensation for loss of office, pensions and other staffing matters; and
- (e) for treating any person to whom a transfer of property, rights or liabilities is made or, as the case may be, by whom any functions are to become exercisable as, for some or all purposes, the same person in law as the person from whom the transfer is made or the authority by whom the functions have previously been exercisable.

(7) The powers to which this section applies shall, in each case, include power to make different provision for different cases, including different provision for different areas or localities and for different authorities.

(8) The powers to which this section applies shall be without prejudice to any powers conferred by [Part 1 of the Local Government and Public Involvement in Health Act 2007] or any other enactment.

(9) In this section “enactment” includes an enactment contained in an Act passed after this Act.

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This section does not extend to Scotland: see s 125(8).

Amendment

Sub-s (8): words “Part 1 of the Local Government and Public Involvement in Health Act 2007” in square brackets substituted by the Local Government and Public Involvement in Health Act 2007, s 22, Sch 1, Pt 2, para 18(1), (2).

Date in force: 1 November 2007: see SI 2007/3136, art 2(b).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

National Park Authorities (England) Order 2015, SI 2015/770 (made under sub-ss (3)–(7)).

76 Agreements as to incidental matters

(1) Any public authorities affected by an order under this Part may from time to time make agreements with respect to—

- (a) any property, income, rights, liabilities or expenses (so far as affected by the order) of the parties to the agreement; or
- (b) any financial relations between those parties.

(2) Such an agreement may provide—

- (a) for the transfer or retention of any property, rights and liabilities, with or without conditions, and for the joint use of any property;
- (b) for the making of payments by any party to the agreement in respect of—
 - (i) property, rights and liabilities transferred or retained,
 - (ii) the joint use of any property, or
 - (iii) remuneration or compensation payable to any person;

and

- (c) for the making of any such payment either by way of a capital sum or of a terminable annuity.

(3) In default of agreement as to any disputed matter, the matter shall be referred to the arbitration of a single arbitrator agreed on by the parties or, in default of agreement, appointed by the Secretary of State; and the award of the arbitrator may make any provision that might be contained in an agreement under this section.

- (4) In subsection (3) above “disputed matter” means any matter which—
- (a) might be the subject of provision contained in an agreement under this section; and
 - (b) is the subject of such a dispute between two or more public authorities as is not resolved by or under provision contained in any order under this Part.

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This section does not extend to Scotland: see s 125(8).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

77 Isles of Scilly

- (1) This Part shall have effect in relation to the Isles of Scilly subject to any such modifications as may be provided for by the Secretary of State by order made by statutory instrument.
- (2) Before making an order under this section the Secretary of State shall consult with the Council of the Isles of Scilly.
- (3) The power to make an order under this section shall include power to make such incidental, supplemental, consequential or transitional provision as the Secretary of State thinks necessary or expedient.

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This section does not extend to Scotland: see s 125(8).

78 Minor and consequential amendments relating to National Parks

The enactments mentioned in Schedule 10 to this Act shall have effect subject to the amendments contained in that Schedule (being minor amendments and consequential amendments in connection with the provisions of this Part).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment (for certain purposes): 23 November 1995: see SI 1995/2950, art 2(1).

Appointment (for certain purposes): 1 April 1996: see SI 1995/2950, art 3(1).

Appointment (for certain purposes): 1 April 1997: see SI 1996/2560, art 2.

79 Interpretation of Part III

(1) In this Part, except in so far as the context otherwise requires—

“the 1972 Act” means the Local Government Act 1972;

“existing authority”, in relation to a National Park, means—

(a) any such joint or special planning board for that Park or for any area wholly or partly comprised in that Park as was reconstituted by an order under paragraph 1 or 3 of Schedule 17 to the 1972 Act or constituted by an order under paragraph 3A of that Schedule or section 2(1B) of the Town and Country Planning Act 1990; or

(b) any National Park Committee for that Park or for any such area;

“liability”, in relation to the transfer of liabilities from one person to another, does not include any criminal liability;

“principal council” and “principal area” have the same meanings as in the 1972 Act;

“public authority” means any local authority within the meaning of the 1972 Act (including any such authority in their capacity as a local planning authority), any National Park authority, any existing authority for a National Park, any joint authority . . . established under Part II of the Local Government Act 1992[, any residuary body established under section 17 of the Local Government and Public Involvement in Health Act 2007], any joint authority established under section 34 of the Local Government (Wales) Act 1994 or the Residuary Body for Wales established by section 39 of that Act;

“the relevant Park”, in relation to a National Park authority, means the area for which that authority is or is to be the National Park authority.

(2) Where—

(a) any enactment that is applied by virtue of this Part in relation to National Park authorities refers, or falls to be construed as referring, to any other enactment, and

(b) that other enactment is also one which is so applied,

the reference shall be construed (so far as it would not be so construed apart from this subsection) as including a reference to the other enactment as it is applied in relation to National Park authorities.

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This section does not extend to Scotland: see s 125(8).

Amendment

Sub-s (1): in definition “public authority” words omitted repealed by the Local Government and Public Involvement in Health Act 2007, ss 22, 241, Sch 1, Pt 2, para 18(1), (3)(a), Sch 18, Pt 1.

Date in force: 1 November 2007: see SI 2007/3136, art 2(b).

Sub-s (1): in definition “public authority” words from “, any residuary body” to “Local Government and Public Involvement in Health Act 2007” in square brackets inserted by the Local Government and Public Involvement in Health Act 2007, s 22, Sch 1, Pt 2, para 18(1), (3)(b).

Date in force: 1 November 2007: see SI 2007/3136, art 2(b).

Part IV

Air Quality

80 National air quality strategy

- (1) The Secretary of State shall as soon as possible prepare and publish a statement (in this Part referred to as “the strategy”) containing policies with respect to the assessment or management of the quality of air.
- (2) The strategy may also contain policies for implementing—
 - (a) obligations of the United Kingdom under the [EU] Treaties, or
 - (b) international agreements to which the United Kingdom is for the time being a party,so far as relating to the quality of air.
- (3) The strategy shall consist of or include—
 - (a) a statement which relates to the whole of Great Britain; or
 - (b) two or more statements which between them relate to every part of Great Britain.
- (4) The Secretary of State—
 - (a) shall keep under review his policies with respect to the quality of air; and
 - (b) may from time to time modify the strategy.
- (5) Without prejudice to the generality of what may be included in the strategy, the strategy must include statements with respect to—
 - (a) standards relating to the quality of air;
 - (b) objectives for the restriction of the levels at which particular substances are present in the air; and
 - (c) measures which are to be taken by local authorities and other persons for the purpose of achieving those objectives.
- (6) In preparing the strategy or any modification of it, the Secretary of State shall consult—
 - (a) the [appropriate agency];
 - (b) such bodies or persons appearing to him to be representative of the interests of local government as he may consider appropriate;
 - (c) such bodies or persons appearing to him to be representative of the interests of industry as he may consider appropriate; and
 - (d) such other bodies or persons as he may consider appropriate.
- (7) Before publishing the strategy or any modification of it, the Secretary of State—
 - (a) shall publish a draft of the proposed strategy or modification, together with notice of a date before which, and an address at which, representations may be made to him concerning the draft so published; and
 - (b) shall take into account any such representations which are duly made and not withdrawn.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 February 1996: see SI 1996/186, art 2.

Amendment

Sub-s (2): in para (a) reference to “EU” in square brackets substituted by SI 2011/1043, art 6(1)(a).
Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.

Sub-s (6): in para (a) words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 377.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

81 Functions of the new Agencies

(1) In discharging its pollution control functions, each new Agency [and the Natural Resources Body for Wales] shall have regard to the strategy.

(2) In this section “pollution control functions”.—

(a) [means] in the case of the Agency [or the Natural Resources Body for Wales], the functions conferred on it by or under the enactments specified in section 5(5) above [(subject, in the case of the Body, to section 5(6) above)]; or

(b) in the case of SEPA, [has the same meaning as in section 108(15) below in relation to SEPA].

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Sub-s (1): words “and the Natural Resources Body for Wales” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 378(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): first words omitted repealed by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 378(1), (3)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): second word omitted repealed by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (11)(a).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (2): in para (a) word “means” in square brackets inserted by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (11)(b).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (2): in para (a) words “or the Natural Resources Body for Wales” in square brackets inserted

by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 378(1), (3)(b)(i).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): in para (a) words “(subject, in the case of the Body, to section 5(6) above)” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 378(1), (3)(b)(ii).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): in para (b) words from “has the same” to “relation to SEPA” in square brackets substituted by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 3, para 14(1), (11)(c).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

82 Local authority reviews

(1) Every local authority shall from time to time cause a review to be conducted of the quality for the time being, and the likely future quality within the relevant period, of air within the authority's area.

(2) Where a local authority causes a review under subsection (1) above to be conducted, it shall also cause an assessment to be made of whether air quality standards and objectives are being achieved, or are likely to be achieved within the relevant period, within the authority's area.

(3) If, on an assessment under subsection (2) above, it appears that any air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the local authority's area, the local authority shall identify any parts of its area in which it appears that those standards or objectives are not likely to be achieved within the relevant period.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 23 December 1997: see SI 1997/3044, art 2.

83 Designation of air quality management areas

(1) Where, as a result of an air quality review, it appears that any air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the area of a local authority, the local authority shall by order designate as an air quality management area (in this Part referred to as a “designated area”) any part of its area in which it appears that those standards or objectives are not being achieved, or are not likely to be achieved within the relevant period.

(2) An order under this section may, as a result of a subsequent air quality review,—

(a) be varied by a subsequent order; or

(b) be revoked by such an order, if it appears on that subsequent air quality review that the air quality standards and objectives are being achieved, and are likely throughout the relevant period to be achieved, within the designated area.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 23 December 1997: see SI 1997/3044, art 2.

84 Duties of local authorities in relation to designated areas

(1) *Where an order under section 83 above comes into operation, the local authority which made the order shall, for the purpose of supplementing such information as it has in relation to the designated area in question, cause an assessment to be made of—*

- (a) *the quality for the time being, and the likely future quality within the relevant period, of air within the designated area to which the order relates; and*
- (b) *the respects (if any) in which it appears that air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within that designated area.*

(2) *A local authority which is required by subsection (1) above to cause an assessment to be made shall also be under a duty—*

- (a) *to prepare, before the expiration of the period of twelve months beginning with the coming into operation of the order mentioned in that subsection, a report of the results of that assessment; and*
- (b) *to [Where an order under section 83 above comes into operation, the local authority which made the order shall] prepare, in accordance with the following provisions of this Part, a written plan (in this Part referred to as an “action plan”) for the exercise by the authority, in pursuit of the achievement of air quality standards and objectives in the designated area, of any powers exercisable by the authority.*

(3) *An action plan shall include a statement of the time or times by or within which the local authority in question proposes to implement each of the proposed measures comprised in the plan.*

(4) *A local authority may from time to time revise an action plan.*

(5) *This subsection applies in any case where the local authority preparing an action plan or a revision of an action plan is the council of a district in England which is comprised in an area for which there is a county council; and if, in a case where this subsection applies, the county council disagrees with the authority about the contents of the proposed action plan or revision of the action plan—*

- (a) *either of them may refer the matter to the Secretary of State;*
- (b) *on any such reference the Secretary of State may confirm the authority's proposed action plan or revision of the action plan, with or without modifications (whether or not proposed by the county council) or reject it and, if he rejects it, he may also exercise any powers of his under section 85 below; and*
- (c) *the authority shall not finally determine the content of the action plan, or the revision of the action plan, except in accordance with his decision on the reference or in pursuance of directions under section 85 below.*

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 23 December 1997: see SI 1997/3044, art 2.

Amendment

Sub-s (1): repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 49(a).
Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (2): words from “A local authority” to “and (b) to” in italics repealed and subsequent words in square brackets substituted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 49(b).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

See Further

See further, in relation to England, the disapplication of sub-s (2)(b) above in so far as it relates to local authorities which are excellent or 4 star authorities: the Local Authorities’ Plans and Strategies (Disapplication) (England) Order 2005, SI 2005/157, art 8(1) (as amended by SI 2009/714, arts 2, 8); for the application of this section to such authorities who have prepared an action plan see SI 2005/157, art 8(2) (as amended by SI 2009/714, arts 2, 8) .

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

85 Reserve powers of the Secretary of State or SEPA

- (1) In this section, “the appropriate authority” means—
 - (a) in relation to [local authorities in England and Wales other than local authorities in Greater London, the Secretary of State;]
[(aa) in relation to local authorities in Greater London, the Mayor of London; and]
 - (b) in relation to Scotland, SEPA acting with the approval of the Secretary of State.
- (2) The appropriate authority may conduct or make, or cause to be conducted or made,—
 - (a) a review of the quality for the time being, and the likely future quality within the relevant period, of air within the area of any local authority;
 - (b) an assessment of whether air quality standards and objectives are being achieved, or are likely to be achieved within the relevant period, within the area of a local authority;
 - (c) an identification of any parts of the area of a local authority in which it appears that those standards or objectives are not likely to be achieved within the relevant period; or
 - (d) an assessment of the respects (if any) in which it appears that air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the area of a local authority or within a designated area.
- (3) If it appears to the appropriate authority—
 - (a) that air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the area of a local authority,
 - (b) that a local authority has failed to discharge any duty imposed on it under or by virtue of this Part,
 - (c) that the actions, or proposed actions, of a local authority in purported compliance with the provisions of this Part are inappropriate in all the circumstances of the case, or
 - (d) that developments in science or technology, or material changes in circumstances, have rendered inappropriate the actions or proposed actions of a local authority in pursuance of this Part,

the appropriate authority may give directions to the local authority requiring it to take such steps as may be

specified in the directions.

(4) Without prejudice to the generality of subsection (3) above, directions under that subsection may, in particular, require a local authority—

- (a) to cause an air quality review to be conducted under section 82 above in accordance with the directions;
- (b) to cause an air quality review under section 82 above to be conducted afresh, whether in whole or in part, or to be so conducted with such differences as may be specified or described in the directions;
- (c) to make an order under section 83 above designating as an air quality management area an area specified in, or determined in accordance with, the directions;
- (d) to revoke, or modify in accordance with the directions, any order under that section;
- (e) to prepare in accordance with the directions an action plan for a designated area;
- (f) to modify, in accordance with the directions, any action plan prepared by the authority; or
- (g) to implement, in accordance with the directions, any measures in an action plan.

[(4A) The powers of the Mayor of London to give directions under this section to a local authority in Greater London may only be exercised after consultation with the local authority concerned.

(4B) In exercising any function under subsection (2), (3) or (4) above [or (5A) below] the Mayor of London shall have regard to any guidance issued by the Secretary of State to local authorities under section 88(1) below.]

(5) The Secretary of State shall also have power to give directions to local authorities[, other than local authorities in Greater London,] requiring them to take such steps specified in the directions as he considers appropriate for the implementation of—

- (a) any obligations of the United Kingdom under the [EU] Treaties, or
- (b) any international agreement to which the United Kingdom is for the time being a party,

so far as relating to the quality of air.

[(5A) The Mayor of London shall also have the same power to give directions to local authorities in Greater London as the Secretary of State has under subsection (5) above in relation to other local authorities.]

(6) Any direction given under this section shall be published in such manner as the body or person giving it considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them; and—

- (a) copies of the direction shall be made available to the public; and
- (b) notice shall be given—
 - (i) in the case of a direction given to a local authority in England and Wales, in the London Gazette, or
 - (ii) in the case of a direction given to a local authority in Scotland, in the Edinburgh Gazette,

of the giving of the direction and of where a copy of the direction may be obtained.

[(6A) The Mayor of London shall send a copy of any direction he gives under this section to the Secretary of State.]

(7) It is the duty of a local authority to comply with any direction given to it under or by virtue of this Part.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 23 December 1997: see SI 1997/3044, art 2.

Amendment

Sub-s (1): in para (a) words “local authorities in England and Wales other than local authorities in Greater London, the Secretary of State;” in square brackets substituted by the Greater London Authority Act 1999, s 367(1), (2)(a).

Date in force: 3 July 2000: see SI 2000/801, art 2(2)(c), Schedule, Pt 3.

Sub-s (1): para (aa) inserted by the Greater London Authority Act 1999, s 367(1), (2)(b).

Date in force: 3 July 2000: see SI 2000/801, art 2(2)(c), Schedule, Pt 3.

Sub-ss (4A), (4B): inserted by the Greater London Authority Act 1999, s 367(1), (3).

Date in force: 3 July 2000: see SI 2000/801, art 2(2)(c), Schedule, Pt 3.

Sub-s (4B): words “or (5A) below” in square brackets inserted by SI 2001/3719, art 2, Schedule, para 6(1), (2).

Date in force: 20 November 2001: see SI 2001/3719, art 1.

Sub-s (5): words “, other than local authorities in Greater London,” in square brackets inserted by the Greater London Authority Act 1999, s 367(1), (4).

Date in force: 3 July 2000: see SI 2000/801, art 2(2)(c), Schedule, Pt 3.

Sub-s (5): in para (a) reference to “EU” in square brackets substituted by SI 2011/1043, art 6(1)(a).

Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.

Sub-s (5A): inserted by SI 2001/3719, art 2, Schedule, para 6(1), (3).

Date in force: 20 November 2001: see SI 2001/3719, art 1.

Sub-s (6A): inserted by the Greater London Authority Act 1999, s 367(5).

Date in force: 3 July 2000: see SI 2000/801, art 2(2)(c), Schedule, Pt 3.

See Further

See further, in relation to England, the application of this section in so far as it relates to excellent or 4 star authorities: the Local Authorities’ Plans and Strategies (Disapplication) (England) Order 2005, SI 2005/157, art 8 (as amended by SI 2009/714, arts 2, 8).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

86 Functions of county councils for areas for which there are district councils

(1) This section applies in any case where a district in England for which there is a district council is comprised in an area for which there is a county council; and in this paragraph—

- (a) any reference to the county council is a reference to the council of that area; and
- (b) any reference to a district council is a reference to the council of a district comprised in that area.

(2) The county council may make recommendations to a district council with respect to the carrying out of—

- (a) any particular air quality review,
- (b) any particular assessment under section 82 or 84 above, or
- (c) the preparation of any particular action plan or revision of an action plan,

and the district council shall take into account any such recommendations.

(3) Where a district council is preparing an action plan, the county council shall, within the relevant period, submit to the district council proposals for the exercise (so far as relating to the designated area) by the county council, in pursuit of the achievement of air quality standards and objectives, of any powers exercisable by the county council.

(4) Where the county council submits proposals to a district council in pursuance of subsection (3) above, it shall also submit a statement of the time or times by or within which it proposes to implement each of the proposals.

(5) An action plan shall include a statement of—

- (a) any proposals submitted pursuant to subsection (3) above; and
- (b) any time or times set out in the statement submitted pursuant to subsection (4) above.

(6) If it appears to the Secretary of State—

- (a) that air quality standards or objectives are not being achieved, or are not likely within the relevant period to be achieved, within the area of a district council,
- (b) that the county council has failed to discharge any duty imposed on it under or by virtue of this Part,
- (c) that the actions, or proposed actions, of the county council in purported compliance with the provisions of this Part are inappropriate in all the circumstances of the case, or
- (d) that developments in science or technology, or material changes in circumstances, have rendered inappropriate the actions or proposed actions of the county council in pursuance of this Part,

the Secretary of State may give directions to the county council requiring it to take such steps as may be specified in the directions.

(7) Without prejudice to the generality of subsection (6) above, directions under that subsection may, in particular, require the county council—

- (a) to submit, in accordance with the directions, proposals pursuant to subsection (3) above or a statement pursuant to subsection (4) above;
- (b) to modify, in accordance with the directions, any proposals or statement submitted by the county council pursuant to subsection (3) or (4) above;
- (c) to submit any proposals or statement so modified to the district council in question pursuant to subsection (3) or (4) above; or
- (d) to implement, in accordance with the directions, any measures included in an action plan.

(8) The Secretary of State shall also have power to give directions to county councils for areas for which there are district councils requiring them to take such steps specified in the directions as he considers appropriate for the implementation of—

- (a) any obligations of the United Kingdom under the [EU] Treaties, or
- (b) any international agreement to which the United Kingdom is for the time being a party,

so far as relating to the quality of air.

(9) Any direction given under this section shall be published in such manner as the Secretary of State considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them; and—

- (a) copies of the direction shall be made available to the public; and
- (b) notice of the giving of the direction, and of where a copy of the direction may be obtained, shall be given in the London Gazette.

(10) It is the duty of a county council for an area for which there are district councils to comply with any direction given to it under or by virtue of this Part.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 23 December 1997: see SI 1997/3044, art 2.

Amendment

Sub-s (8): in para (a) reference to “EU” in square brackets substituted by SI 2011/1043, art 6(1)(a).
Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.

[86A Functions exercisable by the Mayor of London]

[(1) Where a local authority in Greater London is preparing an action plan, the Mayor of London (referred to in this section as “the Mayor”) shall, within the relevant period, submit to the authority proposals for the exercise (so far as relating to the designated area) by the Mayor, in pursuit of the achievement of air quality standards and objectives, of any powers exercisable by the Mayor.

(2) Where the Mayor submits proposals to a local authority in pursuance of subsection (1) above, he shall also submit a statement of the time or times by or within which he proposes to implement each of the proposals.

(3) An action plan shall include a statement of—

- (a) any proposals submitted pursuant to subsection (1) above; and
- (b) any time or times set out in the statement submitted pursuant to subsection (2) above.]

NOTES

Amendment

Inserted by the Greater London Authority Act 1999, s 368.

Date in force: 3 July 2000: see SI 2000/801, art 2(2)(c), Schedule, Pt 3.

87 Regulations for the purposes of Part IV

- (1) Regulations may make provision—
 - (a) for, or in connection with, implementing the strategy;
 - (b) for, or in connection with, implementing—
 - (i) obligations of the United Kingdom under the [EU] Treaties, or
 - (ii) international agreements to which the United Kingdom is for the time being a party,so far as relating to the quality of air; or
 - (c) otherwise with respect to the assessment or management of the quality of air.
- (2) Without prejudice to the generality of subsection (1) above, regulations under that subsection may make provision—
 - (a) prescribing standards relating to the quality of air;
 - (b) prescribing objectives for the restriction of the levels at which particular substances are present in the air;
 - (c) conferring powers or imposing duties on local authorities;
 - (d) for or in connection with—
 - (i) authorising local authorities (whether by agreements or otherwise) to exercise any functions of a Minister of the Crown on his behalf;
 - (ii) directing that functions of a Minister of the Crown shall be exercisable concurrently with local authorities; or
 - (iii) transferring functions of a Minister of the Crown to local authorities;
 - (e) prohibiting or restricting, or for or in connection with prohibiting or restricting,—
 - (i) the carrying on of prescribed activities, or
 - (ii) the access of prescribed vehicles or mobile equipment to prescribed areas,whether generally or in prescribed circumstances;
 - (f) for or in connection with the designation of air quality management areas by orders made by local authorities in such cases or circumstances not falling within section 83 above as may be prescribed;
 - (g) for the application, with or without modifications, of any provisions of this Part in relation to areas designated by virtue of paragraph (f) above or in relation to orders made by virtue of that paragraph;
 - (h) with respect to—
 - (i) air quality reviews;
 - (ii) assessments under this Part;
 - (iii) orders designating air quality management areas; or

- (iv) action plans;
- (j) prescribing measures which are to be adopted by local authorities (whether in action plans or otherwise) or other persons in pursuance of the achievement of air quality standards or objectives;
- (k) for or in connection with the communication to the public of information relating to quality for the time being, or likely future quality, of the air;
- (l) for or in connection with the obtaining by local authorities from any person of information which is reasonably necessary for the discharge of functions conferred or imposed on them under or by virtue of this Part;
- (m) for or in connection with the recovery by a local authority from prescribed persons in prescribed circumstances, and in such manner as may be prescribed, of costs incurred by the authority in discharging functions conferred or imposed on the authority under or by virtue of this Part;
- (n) for a person who contravenes, or fails to comply with, any prescribed provision of the regulations to be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or such lower level on that scale as may be prescribed in relation to the offence;
- (o) for or in connection with arrangements under which a person may discharge any liability to conviction for a prescribed offence by payment of a penalty of a prescribed amount;
- (p) for or in connection with appeals against determinations or decisions made, notices given or served, or other things done under or by virtue of the regulations.

(3) Without prejudice to the generality of paragraph (h) of subsection (2) above, the provision that may be made by virtue of that paragraph includes provision for or in connection with any of the following, that is to say—

- (a) the scope or form of a review or assessment;
- (b) the scope, content or form of an action plan;
- (c) the time at which, period within which, or manner in which a review or assessment is to be carried out or an action plan is to be prepared;
- (d) the methods to be employed—
 - (i) in carrying out reviews or assessments; or
 - (ii) in monitoring the effectiveness of action plans;
- (e) the factors to be taken into account in preparing action plans;
- (f) the actions which must be taken by local authorities or other persons in consequence of reviews, assessments or action plans;
- (g) requirements for consultation;
- (h) the treatment of representations or objections duly made;
- (j) the publication of, or the making available to the public of, or of copies of,—
 - (i) the results, or reports of the results, of reviews or assessments; or

- (ii) orders or action plans;
- (k) requirements for—
 - (i) copies of any such reports, orders or action plans, or
 - (ii) prescribed information, in such form as may be prescribed, relating to reviews or assessments,

to be sent to the Secretary of State or to the [appropriate agency].
- (4) In determining—
 - (a) any appeal against, or reference or review of, a decision of a local authority under or by virtue of regulations under this Part, or
 - (b) any application transmitted from a local authority under or by virtue of any such regulations,

the body or person making the determination shall be bound by any direction given by a Minister of the Crown or SEPA to the local authority to the same extent as the local authority.
- (5) The provisions of any regulations under this Part may include—
 - (a) provision for anything that may be prescribed by the regulations to be determined under the regulations and for anything falling to be so determined to be determined by such persons, in accordance with such procedure and by reference to such matters, and to the opinion of such persons, as may be prescribed;
 - (b) different provision for different cases, including different provision in relation to different persons, circumstances, areas or localities; and
 - (c) such supplemental, consequential, incidental or transitional provision (including provision amending any enactment or any instrument made under any enactment) as the Secretary of State considers appropriate.
- (6) Nothing in regulations under this Part shall authorise any person other than a constable in uniform to stop a vehicle on any road.
- (7) Before making any regulations under this Part, the Secretary of State shall consult—
 - (a) the [appropriate agency];
 - (b) such bodies or persons appearing to him to be representative of the interests of local government as he may consider appropriate;
 - (c) such bodies or persons appearing to him to be representative of the interests of industry as he may consider appropriate; and
 - (d) such other bodies or persons as he may consider appropriate.
- (8) Any power conferred by this Part to make regulations shall be exercisable by statutory instrument; and no statutory instrument containing regulations under this Part shall be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (9) If, apart from this subsection, the draft of an instrument containing regulations under this Part would be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument, it shall proceed in that House as if it were not such an instrument.

[(10) In subsection (5)(c) above, “enactment” includes an enactment comprised in an Act of the Scottish Parliament.]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 February 1996: see SI 1996/186, art 2.

Amendment

Sub-s (1): in para (b)(i) reference to “EU” in square brackets substituted by SI 2011/1043, art 6(1)(a).

Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.

Sub-s (3): words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 379.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (7): in para (a) words “appropriate agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 379.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (10): inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 6, para 43(1), (9).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

UK

Air Quality (England) Regulations 2000, SI 2000/928 (made under sub-ss (1), (2)).

Air Quality (Wales) Regulations 2000, SI 2000/1940 (made under sub-ss (1), (2)).

Air Quality (England) (Amendment) Regulations 2002, SI 2002/3043 (made under sub-ss (1), (2)).

Road Traffic (Vehicle Emissions) (Fixed Penalty) (Wales) Regulations 2003, SI 2003/300 (made under sub-ss (1), (2), (5)).

Scotland

Air Quality (Scotland) Regulations 2000, SSI 2000/97 (made under sub-ss (1), (2)(b), (h), (5)).

Air Quality (Scotland) Amendment Regulations 2002, SSI 2002/297 (made under sub-ss (1), (2)(b), (h)).

Road Traffic (Vehicle Emissions) (Fixed Penalty) (Scotland) Regulations 2003, SSI 2003/212 (made under sub-ss (1)(c), (2), (5)).

88 Guidance for the purposes of Part IV

(1) The Secretary of State may issue guidance to local authorities with respect to, or in connection with, the exercise of any of the powers conferred, or the discharge of any of the duties imposed, on those authorities by or under this Part.

(2) A local authority, in carrying out any of its functions under or by virtue of this Part, shall have regard to any guidance issued by the Secretary of State under this Part.

(3) This section shall apply in relation to county councils for areas for which there are district councils as it applies in relation to local authorities.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 February 1996: see SI 1996/186, art 2.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

89 Application of Part IV to the Isles of Scilly

(1) Subject to the provisions of any order under this section, this Part, other than section 80, shall not apply in relation to the Isles of Scilly.

(2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Part (other than section 80) to the Isles of Scilly; and any such order may provide for the application of those provisions to those Isles with such modifications as may be specified in the order.

(3) An order under this section may—

- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.

(4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument; and a statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 February 1996: see SI 1996/186, art 2.

90 Supplemental provisions

Schedule 11 to this Act shall have effect.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment (for certain purposes): 1 February 1996: see SI 1996/186, art 2.

Appointment (for remaining purposes): 23 December 1997: see SI 1997/3044, art 2.

91 Interpretation of Part IV

(1) In this Part—

“action plan” shall be construed in accordance with section 84(2)(b) [84(2)] above;

“air quality objectives” means objectives prescribed by virtue of section 87(2)(b) above;

“air quality review” means a review under section 82 or 85 above;

“air quality standards” means standards prescribed by virtue of section 87(2)(a) above;

[“the appropriate agency” means—

- (a) in relation to England, the Agency;
- (b) in relation to Wales, the Natural Resources Body for Wales;
- (c) in relation to Scotland, SEPA;]

“designated area” has the meaning given by section 83(1) above;

“local authority”, in relation to England and Wales, means—

- (a) any unitary authority,
- (b) any district council, so far as it is not a unitary authority,
- (c) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively,

and, in relation to Scotland, means a council for an area constituted under section 2 of the Local Government etc (Scotland) Act 1994;

“new Agency” means the Agency or SEPA;

“prescribed” means prescribed, or of a description prescribed, by or under regulations;

“regulations” means regulations made by the Secretary of State;

“the relevant period”, in the case of any provision of this Part, means such period as may be prescribed for the purposes of that provision;

“the strategy” has the meaning given by section 80(1) above;

“unitary authority” means—

- (a) the council of a county, so far as it is the council of an area for which there are no district councils;
- (b) the council of any district comprised in an area for which there is no county council;
- (c) the council of a London borough;
- (d) the council of a county borough in Wales.

(2) Any reference in this Part to it appearing that any air quality standards or objectives are not likely within the relevant period to be achieved includes a reference to it appearing that those standards or objectives are likely within that period not to be achieved.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 February 1996: see SI 1996/186, art 2.

Amendment

Sub-s (1): in definition “action plan” reference to “84(2)(b)” in italics repealed and subsequent reference in square brackets substituted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (5).

Date in force (in relation to Scotland): 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Date in force (in relation to England and Wales): to be appointed: see the Regulatory Reform (Scotland) Act 2014, s 61(2).

Sub-s (1): definition “the appropriate agency” substituted, for definition “the appropriate new Agency” as originally enacted, by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 380.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

UK

Air Quality (England) Regulations 2000, SI 2000/928 (made under sub-s (1)).

Air Quality (Wales) Regulations 2000, SI 2000/1940 (made under sub-s (1)).

Air Quality (England) (Amendment) Regulations 2002, SI 2002/3043 (made under sub-s (1)).

Scotland

Air Quality (Scotland) Regulations 2000, SSI 2000/97 (made under sub-s (1)).

Part V

Miscellaneous, General and Supplemental Provisions

Waste

92 National waste strategy

(1) . . .

(2) After Schedule 2 to that Act there shall be inserted the Schedule set out in Schedule 12 to this Act.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Sub-s (1): inserts the Environmental Protection Act 1990, ss 44A, 44B.

93 Producer responsibility: general

(1) For the purpose of promoting or securing an increase in the re-use, recovery or recycling of products or materials, the Secretary of State may by regulations make provision for imposing producer responsibility obligations on such persons, and in respect of such products or materials, as may be prescribed.

(2) The power of the Secretary of State to make regulations shall be exercisable only after consultation with bodies or persons appearing to him to be representative of bodies or persons whose interests are, or are likely to be, substantially affected by the regulations which he proposes to make.

(3) Except in the case of regulations for the implementation of—

- (a) any obligations of the United Kingdom under the [EU] Treaties, or
- (b) any international agreement to which the United Kingdom is for the time being a party,

the power to make regulations shall be exercisable only where the Secretary of State, after such consultation as is required by subsection (2) above, is satisfied as to the matters specified in subsection (6) below.

(4) The powers conferred by subsection (1) above shall also be exercisable, in a case falling within paragraph (a) or (b) of subsection (3) above, for the purpose of sustaining at least a minimum level of (rather than promoting or securing an increase in) re-use, recovery or recycling of products or materials.

(5) In making regulations by virtue of paragraph (a) or (b) of subsection (3) above, the Secretary of State shall have regard to the matters specified in subsection (6) below; and in its application in relation to the power conferred by virtue of subsection (4) above, subsection (6) below shall have effect as if—

- (a) any reference to an increase in the re-use, recovery or recycling of products or materials were a reference to the sustaining of at least a minimum level of re-use, recovery or recycling of the products or materials in question, and
- (b) any reference to the production of environmental or economic benefits included a reference to the sustaining of at least a minimum level of any such existing benefits,

and any reference in this section or section 94 below to securing or achieving any such benefits shall accordingly include a reference to sustaining at least a minimum level of any such existing benefits.

(6) The matters mentioned in subsections (3) and (5) above are—

- (a) that the proposed exercise of the power would be likely to result in an increase in the re-use, recovery or recycling of the products or materials in question;
- (b) that any such increase would produce environmental or economic benefits;
- (c) that those benefits are significant as against the likely costs resulting from the imposition of the proposed producer responsibility obligation;
- (d) that the burdens imposed on businesses by the regulations are the minimum necessary to secure those benefits; and
- (e) that those burdens are imposed on persons most able to make a contribution to the achievement of the relevant targets—
 - (i) having regard to the desirability of acting fairly between persons who manufacture, process, distribute or supply products or materials; and
 - (ii) taking account of the need to ensure that the proposed producer responsibility obligation is so framed as to be effective in achieving the purposes for

which it is to be imposed;

but nothing in sub-paragraph (i) of paragraph (e) above shall be taken to prevent regulations imposing a producer responsibility obligation on any class or description of person to the exclusion of any others.

(7) The Secretary of State shall have a duty to exercise the power to make regulations in the manner which he considers best calculated to secure that the exercise does not have the effect of restricting, distorting or preventing competition or, if it is likely to have any such effect, that the effect is no greater than is necessary for achieving the environmental or economic benefits mentioned in subsection (6) above.

(8) In this section—

“prescribed” means prescribed in regulations;

“product” and “material” include a reference to any product or material (as the case may be) at a time when it becomes, or has become, waste;

“producer responsibility obligation” means the steps which are required to be taken by relevant persons of the classes or descriptions to which the regulations in question apply in order to secure attainment of the targets specified or described in the regulations;

“recovery”, in relation to products or materials, includes—

(a) composting, or any other form of transformation by biological processes, of products or materials; or

(b) the obtaining, by any means, of energy from products or materials;

“regulations” means regulations under this section;

“relevant persons”, in the case of any regulations or any producer responsibility obligation, means persons of the class or description to which the producer responsibility obligation imposed by the regulations applies;

“relevant targets” means the targets specified or described in the regulations imposing the producer responsibility obligation in question;

and regulations may prescribe, in relation to prescribed products or materials, activities, or the activities, which are to be regarded for the purposes of this section and sections 94 and 95 below or any regulations as re-use, recovery or recycling of those products or materials.

(9) The power to make regulations shall be exercisable by statutory instrument.

(10) Subject to the following provisions of this section, a statutory instrument containing regulations shall not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(11) Subsection (10) above shall not apply to a statutory instrument by reason only that it contains regulations varying any relevant targets.

(12) A statutory instrument which, by virtue of subsection (11) above, is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament shall be subject to annulment in pursuance of a resolution of either House of Parliament.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 21 September 1995: see SI 1995/1983, art 3.

Amendment

Sub-s (3): in para (a) reference to “EU” in square brackets substituted by SI 2011/1043, art 6(1)(a).
Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871.
Producer Responsibility Obligations (Packaging Waste) (Amendment No 2) Regulations 2008, SI 2008/1941.
Environmental Civil Sanctions (Miscellaneous Amendments) (England) Regulations 2010, SI 2010/1159.
Environmental Civil Sanctions (Miscellaneous Amendments) (Wales) Regulations 2010, SI 2010/1820.
Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2010, SI 2010/2849.
Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2012, SI 2012/3082.
Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2013, SI 2013/1857.
Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2014, SI 2014/2890.

94 Producer responsibility: supplementary provisions

(1) Without prejudice to the generality of section 93 above, regulations may, in particular, make provision for or with respect to—

- (a) the classes or descriptions of person to whom the producer responsibility obligation imposed by the regulations applies;
- (b) the classes or descriptions of products or materials in respect of which the obligation applies;
- (c) the targets which are to be achieved with respect to the proportion (whether by weight, volume or otherwise) of the products or materials in question which are to be re-used, recovered or recycled, whether generally or in any prescribed way;
- (d) particulars of the obligation imposed by the regulations;
- (e) the registration of persons who are subject to a producer responsibility obligation and who are not members of registered exemption schemes, the imposition of requirements in connection with such registration, the variation of such requirements, the making of applications for such registration, the period for which any such registration is to remain in force and the cancellation of any such registration;
- (f) the approval, or withdrawal of approval, of exemption schemes by the Secretary of State;
- (g) the imposition of requirements on persons who are not members of registered exemption schemes to furnish certificates of compliance to the appropriate Agency;

- (h) the approval of persons by the appropriate Agency for the purpose of issuing certificates of compliance;
- (j) the registration of exemption schemes, the imposition of conditions in connection with such registration, the variation of such conditions, the making of applications for such registration and the period for which any such registration is to remain in force;
- (k) the requirements which must be fulfilled, and the criteria which must be met, before an exemption scheme may be registered;
- (l) the powers of the appropriate Agency in relation to applications received by it for registration of exemption schemes;
- (m) the cancellation of the registration of an exemption scheme;
- (n) . . .
- (o) . . .
- [(oa) . . .]
- (p) the fees, or the method of determining the fees, which are to be paid to the appropriate Agency—
 - (i) in respect of the approval of persons for the purpose of issuing certificates of compliance;
 - (ii) on the making of an application for registration of an exemption scheme;
 - (iii) in respect of the subsistence of the registration of that scheme;
 - (iv) on submission to the appropriate Agency of a certificate of compliance;
 - (v) on the making of an application for, or for the renewal of, registration of a person required to register under the regulations;
 - (vi) in respect of the renewal of the registration of that person;
- (q) appeals against the refusal of registration, the imposition of conditions in connection with registration, or the cancellation of the registration, of any exemption scheme;
- (r) the procedure on any such appeal;
- (s) cases, or classes of case,—
 - (i) in which an exemption scheme is, or is not, to be treated as registered, or
 - (ii) in which a person is, or is not, to be treated as a member of a registered exemption scheme,

pending the determination or withdrawal of an appeal, and otherwise with respect to the position of persons and exemption schemes pending such determination or withdrawal;
- (t) the imposition on the appropriate Agency of a duty to monitor compliance with any of the obligations imposed by the regulations.;
- (u) the imposition on prescribed persons of duties to maintain records, and furnish to the Secretary of State or to the appropriate Agency returns, in such form as may be prescribed of such information as may be prescribed for any purposes of, or for any purposes connected

with, or related to, sections 93 to 95 of this Act or any regulations;

- (w) the imposition on the appropriate Agency of a duty to maintain, and make available for inspection by the public, a register containing prescribed information relating to registered exemption schemes or persons required to register under the regulations;
- (y) the powers of entry and inspection which are exercisable by a new Agency for the purposes of its functions under the regulations;
- (ya) . . .

(2) If it appears to the Secretary of State—

- (a) that any action proposed to be taken by the operator of a registered exemption scheme would be incompatible with—
 - (i) any obligations of the United Kingdom under the [EU] Treaties, or
 - (ii) any international agreement to which the United Kingdom is for the time being a party, or
- (b) that any action which the operator of such a scheme has power to take is required for the purpose of implementing any such obligations or agreement,

he may direct that operator not to take or, as the case may be, to take the action in question.

(3) Regulations may make provision as to which of the new Agencies is the appropriate Agency for the purposes of any function conferred or imposed by or under this section or section 93 above, or for the purposes of the exercise of that function in relation to the whole or a prescribed part of Great Britain, and may make provision for things done or omitted to be done by [a new Agency] in relation to any part of Great Britain to be treated for prescribed purposes as done or omitted to be done by [any other of them] in relation to some other part of Great Britain.

(4) Persons issuing certificates of compliance shall act in accordance with guidance issued for the purpose by the appropriate Agency, which may include guidance as to matters which are, or are not, to be treated as evidence of compliance or as evidence of non-compliance.

(5) In making any provision in relation to fees, regard shall be had to the desirability of securing that the fees received by each new Agency under the regulations are sufficient to meet the costs and expenses incurred by that Agency in the performance of its functions under the regulations.

(6) In this section—

“the appropriate Agency”, subject to regulations made by virtue of subsection (3) above, means—

- (a) in relation to England . . . , the Agency;
- [(aa) in relation to Wales, the Natural Resources Body for Wales;]
- (b) in relation to Scotland, SEPA;

“certificate of compliance” means a certificate issued by a person approved for the purpose by the appropriate Agency to the effect that that person is satisfied that the person in respect of whom the certificate is issued is complying with any producer responsibility obligation to which he is subject;

. . .

“exemption scheme” means a scheme which is (or, if it were to be registered in accordance with the regulations, would be) a scheme whose members for the time being are, by virtue of the regulations and their membership of that scheme, exempt from the requirement to comply with the producer responsibility obligation imposed by the regulations;

“new Agency” means the Agency[, the Natural Resources Body for Wales or SEPA];

“operator”, in relation to an exemption scheme, includes any person responsible for establishing, maintaining or managing the scheme;

“registered exemption scheme” means an exemption scheme which is registered pursuant to regulations;

and expressions used in this section and in section 93 above have the same meaning in this section as they have in that section.

[(6A) . . .]

(7) Regulations—

- (a) may make different provision for different cases;
- (b) without prejudice to the generality of paragraph (a) above, may impose different producer responsibility obligations in respect of different classes or descriptions of products or materials and for different classes or descriptions of person or exemption scheme;
- (c) may include incidental, consequential, supplemental or transitional provision.

(8) Any direction under this section—

- (a) may include such incidental, consequential, supplemental or transitional provision as the Secretary of State considers necessary or expedient; and
- (b) shall, on the application of the Secretary of State, be enforceable by injunction or, in Scotland, by interdict or by an order for specific performance under section 45 of the Court of Session Act 1988.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 21 September 1995: see SI 1995/1983, art 3.

Amendment

Sub-s (1): para (n) repealed by SI 2004/1261, reg 5, Sch 2, para 7(1), (2)(a).

Date in force: 1 May 2004: see SI 2004/1261, reg 1(b); for savings and transitional provision see reg 6(1), (2), (4) thereof.

Sub-s (1): para (o) repealed by SI 2000/311, art 28(1), (2).

Date in force: 1 March 2000: see SI 2000/311, art 1.

Sub-s (1): para (oa) inserted by the Competition Act 1998, s 3(1)(b), Sch 2, para 6(2).

Date in force: 11 January 1999: see SI 1998/3166, art 2, Schedule.

Sub-s (1): para (oa) repealed by SI 2004/1261, reg 5, Sch 2, para 7(1), (2)(a).

Date in force: 1 May 2004: see SI 2004/1261, reg 1(b); for savings and transitional provision see reg 6(1), (2), (4) thereof.

Sub-s (1): para (ya) repealed by SI 2004/1261, reg 5, Sch 2, para 7(1), (2)(a).

Date in force: 1 May 2004: see SI 2004/1261, reg 1(b); for savings and transitional provision

- see reg 6(1), (2), (4) thereof.
- Sub-s (2): in para (a)(i) reference to “EU” in square brackets substituted by SI 2011/1043, art 6(1)(a).
Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.
- Sub-s (3): words “a new Agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 381(1), (2)(a).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (3): words “any other of them” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 381(1), (2)(b).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (6): in definition “the appropriate Agency” in para (a) words omitted repealed by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 381(1), (3)(a)(i).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (6): in definition “the appropriate Agency” para (aa) inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 381(1), (3)(a)(ii).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (6): definition “competition scrutiny” (omitted) repealed by SI 2004/1261, reg 5, Sch 2, para 7(1), (2)(b).
Date in force: 1 May 2004: see SI 2004/1261, reg 1(b); for savings and transitional provision see reg 6(1), (2), (4) thereof.
- Sub-s (6): in definition “new Agency” words “, the Natural Resources Body for Wales or SEPA” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 381(1), (3)(b).
Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.
- Sub-s (6A): inserted by the Competition Act 1998, s 3(1)(b), Sch 2, para 6(3).
Date in force: 11 January 1999: see SI 1998/3166, art 2, Schedule.
- Sub-s (6A): repealed by SI 2004/1261, reg 5, Sch 2, para 7(1), (2)(c).
Date in force: 1 May 2004: see SI 2004/1261, reg 1(b); for savings and transitional provision see reg 6(1), (2), (4) thereof.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871.
 Producer Responsibility Obligations (Packaging Waste) (Amendment No 2) Regulations 2008, SI 2008/1941.
 Environmental Civil Sanctions (Miscellaneous Amendments) (England) Regulations 2010, SI 2010/1159.
 Environmental Civil Sanctions (Miscellaneous Amendments) (Wales) Regulations 2010, SI 2010/1820.
 Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2010, SI 2010/2849.
 Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2012, SI 2012/3082.
 Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2013, SI 2013/1857.
 Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2014, SI 2014/2890.

[94A . . .]

[. . .]

NOTES

Amendment

Inserted by the Competition Act 1998, s 3(1)(b), Sch 2, para 6(4).

Date in force: 11 January 1999: see SI 1998/3166, art 2, Schedule.

Repealed by SI 2004/1261, reg 5, Sch 2, para 7(1), (3)

Date in force: 1 May 2004: see SI 2004/1261, reg 1(b); for savings and transitional provision see reg 6(1), (2), (4) thereof.

95 Producer responsibility: offences

(1) Regulations may make provision for a person who contravenes a prescribed requirement of the regulations to be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine.

(2) Where an offence under any provision of the regulations committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, subsection (2) above shall apply in relation to the acts or defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(4) Where the commission by any person of an offence under the regulations is due to the act or default of some other person, that other person may be charged with and convicted of the offence by virtue of this section whether or not proceedings for the offence are taken against the first-mentioned person.

(5) Expressions used in this section and in section 93 or 94 above have the same meaning in this section as they have in that section.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 21 September 1995: see SI 1995/1983, art 3.

Subordinate Legislation

Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871.

Producer Responsibility Obligations (Packaging Waste) (Amendment No 2) Regulations 2008, SI 2008/1941.

Environmental Civil Sanctions (Miscellaneous Amendments) (England) Regulations 2010, SI 2010/1159.

Environmental Civil Sanctions (Miscellaneous Amendments) (Wales) Regulations 2010, SI 2010/1820.

Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2010, SI 2010/2849.

Producer Responsibility Obligations (Packaging Waste) (Amendment) Regulations 2012, SI 2012/3082.

Mineral planning permissions

96 Mineral planning permissions

- (1) Schedules 13 and 14 to this Act shall have effect.
- (2) This section, those Schedules . . . , and the 1990 Act shall have effect as if this section and those Schedules . . . were included in Part III of that Act.
- (3) . . .
- (4) Section 105 of the 1990 Act . . . shall cease to have effect.
- (5) Without prejudice to the generality of sections 59 to 61 of the 1990 Act . . . , a development order may make, in relation to any planning permission which is granted by a development order for minerals development, provision similar to any provision made by Schedule 13 or 14 to this Act.
- (6) In this section and those Schedules—

. . .

“the 1990 Act” means the Town and Country Planning Act 1990;

“the 1991 Act” means the Planning and Compensation Act 1991; and

“minerals development” means development consisting of the winning and working of minerals, or involving the depositing of mineral waste.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Sub-ss (1), (5), (6): Appointment (in relation to England and Wales): 1 November 1995: see SI 1995/2765, art 2.

Sub-ss (1), (5), (6): Appointment (in relation to Scotland): 1 January 1997: see SI 1996/2857, art 2.

Sub-s (2): Appointment: 1 November 1995: see SI 1995/2765, art 2.

Sub-s (3): Appointment: 1 January 1997: see SI 1996/2857, art 2.

Sub-s (4): Appointment (in so far as it relates to the repeal of the Town and Country Planning Act 1990, s 105): 1 November 1995: see SI 1995/2765, art 2.

Sub-s (4): Appointment (in so far as it relates to the repeal of the Town and Country Planning (Scotland) Act 1972, s 251A): 1 January 1997: see SI 1996/2857, art 2.

Amendment

Repealed, in relation to Scotland only, by the Planning (Consequential Provisions) (Scotland) Act 1997, s 3, Sch 1, Part II.

Sub-ss (2), (4)–(6): words omitted repealed, in relation to England and Wales, by the Planning (Consequential Provisions) (Scotland) Act 1997, s 3, Sch 1, Part III.

Sub-s (3): repealed, in relation to England and Wales, by the Planning (Consequential Provisions) (Scotland) Act 1997, s 3, Sch 1, Part III.

Hedgerows etc

97 Hedgerows

- (1) The appropriate Ministers may by regulations make provision for, or in connection with, the protection of important hedgerows in England or Wales.
- (2) The question whether a hedgerow is or is not “important” for the purposes of this section shall be determined in accordance with prescribed criteria.
- (3) For the purpose of facilitating the protection of important hedgerows, regulations under subsection (1) above may also make provision in relation to other hedgerows in England or Wales.
- (4) Without prejudice to the generality of subsections (1) to (3) above, regulations under subsection (1) above may provide for the application (with or without modifications) of, or include provision comparable to, any provision contained in the planning Acts and may, in particular, make provision—
- (a) prohibiting, or for prohibiting, the removal of, or the carrying out of prescribed acts in relation to, a hedgerow except in prescribed cases;
 - (b) for or with respect to appeals against determinations or decisions made, or notices given or served, under or by virtue of the regulations, including provision authorising or requiring any body or person to whom an appeal lies to consult prescribed persons with respect to the appeal in prescribed cases;
 - (c) for a person who contravenes, or fails to comply with, any prescribed provision of the regulations to be guilty of an offence;
 - (d) for a person guilty of an offence by virtue of paragraph (c) above which consists of the removal, in contravention of the regulations, of a hedgerow of a description prescribed for the purposes of this paragraph to be liable—
 - (i) on summary conviction, to a fine not exceeding the statutory maximum,
 - or
 - (ii) on conviction on indictment, to a fine;
 - (e) for a person guilty of any other offence by virtue of paragraph (c) above to be liable on summary conviction to a fine not exceeding such level on the standard scale as may be prescribed.
- (5) Regulations under this section may make different provision for different cases, including different provision in relation to different descriptions of hedgerow, different descriptions of person, different areas or localities or different circumstances.
- (6) Before making any regulations under this section the appropriate Ministers shall consult—
- (a) such bodies appearing to them to be representative of persons whose business interests are likely to be affected by the proposed regulations,
 - (b) such bodies appearing to them to be representative of the interests of owners or occupiers of land,
 - (c) such bodies appearing to them to be representative of the interests of local authorities,
 - (d) such bodies whose statutory functions include the provision to Ministers of the Crown of advice concerning matters relating to environmental conservation, and
 - (e) such bodies not falling within paragraphs (a) to (d) above,

as the appropriate Ministers may consider appropriate.

(7) No statutory instrument containing regulations under this section shall be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

(8) In this section—

“the appropriate Ministers” means—

(a) as respects England, the Secretary of State and the Minister of Agriculture, Fisheries and Food;

(b) as respects Wales, the Secretary of State;

“environmental conservation” means conservation—

(a) of the natural beauty or amenity, or flora or fauna, of England or Wales;
or

(b) of features of archaeological or historic interest in England or Wales;

“hedgerow” includes any stretch of hedgerow;

“local authority” means—

(a) the council of a county, county borough, district, London borough, parish or community;

(b) the Common Council of the City of London;

(c) the Council of the Isles of Scilly;

“the planning Acts” has the same meaning as it has in the Town and Country Planning Act 1990 by virtue of section 336(1) of that Act;

“prescribed” means specified, or of a description specified, in regulations;

“regulations” means regulations made by statutory instrument;

“remove”, in relation to a hedgerow, means uproot or otherwise destroy, and cognate expressions shall be construed accordingly;

“statutory functions” means functions conferred or imposed by or under any enactment.

(9) Any reference in this section to removing, or carrying out an act in relation to, a hedgerow includes a reference to causing or permitting another to remove, or (as the case may be) carry out an act in relation to, a hedgerow.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 21 September 1995: see SI 1995/1983, art 3.

Transfer of Functions

Functions of the appropriate Ministers, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order

1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

Hedgerows Regulations 1997, SI 1997/1160.

98 Grants for purposes conducive to conservation

(1) The appropriate Minister, with the consent of the Treasury [as respects England and Wales], may by regulations make provision for and in connection with the making of grants to persons who do, or who undertake to that Minister that they will do, anything which in the opinion of that Minister is conducive to—

- (a) the conservation or enhancement of the natural beauty or amenity of the countryside (including its flora and fauna and geological and physiographical features) or of any features of archaeological interest there; or
- (b) the promotion of the enjoyment of the countryside by the public.

(2) Regulations under this section may—

- (a) make different provision for different cases or classes of case or for different areas;
- (b) provide for grants to be made subject to conditions;
- (c) confer power on the appropriate Minister to modify, in any particular case, the conditions to which a grant would otherwise be subject, if he is satisfied that the making of that grant, subject to the conditions as so modified, is consistent with the purposes for which the regulations are made;
- (d) make provision for or in connection with the recovery of any sums paid by way of grant, or the withholding of any further payments of grant, in cases where the applicant for the grant—
 - (i) in making the application, or in furnishing any information in connection with the application, has made a statement which was false or misleading in a material respect;
 - (ii) has failed to do something which he undertook to do if the grant was made; or
 - (iii) is in breach of any condition subject to which the grant was made.

(3) The power to make regulations under this section shall be exercisable by statutory instrument; and a statutory instrument containing any such regulations shall be subject to annulment pursuant to a resolution of either House of Parliament.

(4) The powers conferred by this section are in addition to any other powers of the Secretary of State or the Minister of Agriculture, Fisheries and Food.

(5) In this section “the appropriate Minister” means—

- (a) as respects England, the Minister of Agriculture, Fisheries and Food;
- (b) as respects Wales, the Secretary of State;
- (c) as respects Scotland, the Secretary of State.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 21 September 1995: see SI 1995/1983, art 3.

Amendment

Sub-s (1): words “as respects England and Wales” in square brackets inserted by SI 1999/1820, art 4, Sch 2, Pt I, para 120(1), (7).

Date in force: 1 July 1999: see SI 1999/1820, art 1(2).

Transfer of Functions

Functions of the appropriate Minister and the Treasury, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

UK

Countryside Stewardship (Amendment) Regulations 1999, SI 1999/1177.

Countryside Stewardship Regulations 2000, SI 2000/3048.

Countryside Stewardship (Amendment) Regulations 2001, SI 2001/3991.

Countryside Stewardship (Amendment) Regulations 2004, SI 2004/114.

Environmental Stewardship (England) Regulations 2005, SI 2005/621.

Environmental Stewardship (England) and Countryside Stewardship (Amendment) Regulations 2006, SI 2006/991.

Environmental Stewardship (England) and Organic Products (Amendment) Regulations 2006, SI 2006/2075.

Scotland

Rural Stewardship Scheme (Scotland) Regulations 2001, SSI 2001/300 (made under sub-ss (1), (2)).

Rural Stewardship Scheme (Scotland) Amendment Regulations 2003, SSI 2003/177 (made under sub-ss (1), (2)).

Rural Stewardship Scheme (Scotland) Amendment (No 2) Regulations 2003, SSI 2003/303 (made under sub-ss (1), (2)).

Rural Stewardship Scheme (Scotland) Amendment Regulations 2004, SSI 2004/109 (made under sub-ss (1), (2)).

Countryside Premium Scheme (Scotland) Amendment Regulations 2004, SSI 2004/113 (made under sub-ss (1), (2)).

Rural Stewardship Scheme (Scotland) Amendment Regulations 2005, SSI 2005/620 (made under sub-ss (1), (2)).

99 Consultation before making or modifying certain subordinate legislation for England

- (1) The Minister shall consult the bodies and persons specified in subsection (2) below before—
 - (a) making any legislation to which this section applies (other than a modification of any such legislation);
 - (b) modifying any such legislation in a way which changes the purpose of the legislation in question; or
 - (c) modifying any such legislation in a way which modifies, in a respect which he considers material, any conditions subject to which grants or other payments are payable under that legislation.
- (2) The bodies and persons mentioned in subsection (1) above are—
 - (a) the Secretary of State;
 - [(b) Natural England;]

- (d) the Historic Buildings and Monuments Commission for England.
- (3) The legislation to which this section applies is—
- (a) any order under section 18 of the Agriculture Act 1986 (orders establishing environmentally sensitive areas);
 - (b) any regulations under section 98 above;
 - (c) any statutory instrument specified in subsection (4) below;
 - (d) any other statutory instrument which concerns the management of land and whose primary purpose is the promotion of—
 - (i) the conservation or enhancement of the natural beauty or amenity of the countryside (including its flora and fauna and geological and physiographical features) or of any features of archaeological interest there; or
 - (ii) the enjoyment of the countryside by the public.
- (4) The statutory instruments mentioned in subsection (3)(c) above are—
- (a) the Farm Woodlands Premium Scheme 1992;
 - (b) the Habitat (Water Fringe) Regulations 1994;
 - (c) the Habitat (Former Set-Aside Land) Regulations 1994;
 - (d) the Habitat (Salt Marsh) Regulations 1994;
 - (e) the Organic Farming (Aid) Regulations 1994;
 - (f) the Nitrate Sensitive Areas Regulations 1994;
 - (g) the Countryside Access Regulations 1994;
 - (h) the Moorland (Livestock Extensification) Regulations 1995.
- (5) In this section, “the Minister” means the Minister of Agriculture Fisheries and Food.
- (6) This section applies in relation to any legislation only so far as relating to land in England.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 21 September 1995: see SI 1995/1983, art 3.

Amendment

Sub-s (2): para (b) substituted, for paras (b), (c) as originally enacted, by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 145.

Date in force: 1 October 2006: see SI 2006/2541, art 2.

Drainage

100 Meaning of “drainage” in certain enactments

...

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 21 September 1995: see SI 1995/1983, art 3.

Amendment

This section amends the Water Resources Act 1991, s 113(1), and the Land Drainage Act 1991, s 72(1).

101 Grants in connection with drainage works

(1) < . . . >

(2) < . . . >

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 21 September 1995: see SI 1995/1983, art 3.

Amendment

Sub-s (1): repealed by the Water Act 2003, s 101, Sch 7, Pt 3, para 42, Sch 9, Pt 3.

Date in force (in relation to England): 17 March 2004: by virtue of SI 2004/641, art 2(c), (d)(ii).

Date in force (in relation to Wales): 1 April 2004: see SI 2004/910, art 2(1)(c), (d).

Sub-s (2): amends the Land Drainage Act 1991, s 59.

Fisheries

102 . . .

...

NOTES

Amendment

Repealed by the Marine and Coastal Access Act 2009, s 321, Sch 22, Pt 4.

Date in force (in relation in Wales): 1 April 2010: see SI 2010/630, art 3(b); for transitional provisions see arts 8, 12 thereof.

Date in force (in relation to England): 1 April 2011: see SI 2011/556, art 2(1), (2)(o), (3).

103 Other marine or aquatic environmental conservation powers

...

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 21 September 1995: see SI 1995/1983, art 3.

Amendment

This section inserts the Sea Fish (Conservation) Act 1967, s 5A, the Inshore Fishing (Scotland) Act 1984, s 2A, and the Water Resources Act 1991, Sch 25, para 6A.

104 Fixed penalty system for certain fisheries offences

...

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

This section inserts the Salmon and Freshwater Fisheries Act 1975, s 37A, and amends ss 35, 41.

105 Minor and consequential amendments relating to fisheries

Schedule 15 to this Act (which makes minor and consequential amendments relating to fisheries) shall have effect.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment (for certain purposes): 21 September 1995: see SI 1995/1983, art 3.

Appointment (for certain purposes): 1 February 1996: see SI 1996/186, art 2.

Appointment (for certain purposes): 1 April 1996: see SI 1996/186, art 3.

Appointment (for remaining purposes): 1 January 1999: see SI 1995/1983, art 4.

New provisions for Scotland

106 Control of pollution of water in Scotland

Schedule 16 to this Act (which amends the Control of Pollution Act 1974 as respects the control of pollution of rivers and coastal waters in Scotland) shall have effect.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Extent

This section applies to Scotland only: see s 125(9).

107 Statutory nuisances: Scotland

Schedule 17 to this Act (which makes provision with respect to statutory nuisances in Scotland) shall have effect.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Powers of entry

108 Powers of enforcing authorities and persons authorised by them

(1) A person who appears suitable to an enforcing authority may be authorised in writing by that authority to exercise, in accordance with the terms of the authorisation, any of the powers specified in subsection (4) below for the purpose—

- (a) of determining whether any provision of the pollution control enactments in the case of that authority is being, or has been, complied with;
- (b) of exercising or performing one or more of the pollution control functions of that authority; or
- (c) of determining whether and, if so, how such a function should be exercised or performed;
- [(d) of determining whether any of the following offences are being or have been committed—
 - (i) an offence under section 110 of this Act;
 - (ii) an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014 (offences relating to significant environmental harm);
 - (iii) an offence under section 293(2) of the Criminal Procedure (Scotland) Act 1995 (statutory offences: art and part and aiding or abetting) as it applies in relation to an offence mentioned in sub-paragraph (i) or (ii) above;
 - (iv) an attempt, conspiracy or incitement to commit an offence mentioned in sub-paragraph (i) or (ii) above; or
- (e) in a case only where the person is authorised by SEPA, of determining whether, and if so to what extent, any financial benefit has accrued or is likely to accrue to a person in connection with an offence mentioned in subsection (1A) below which the authorised person reasonably believes is being or has been committed].

[(1A) The offence is a relevant offence (within the meaning of section 53 of the Regulatory Reform (Scotland) Act 2014) for the purpose of provision made under section 24, or of section 35, of that Act].

(2) A person who appears suitable to the Agency[, the Natural Resources Body for Wales] or SEPA may be authorised in writing by the Agency[, the Natural Resources Body for Wales] or, as the case may be, SEPA to exercise, in accordance with the terms of the authorisation, any of the powers specified in subsection (4) below for the purpose of enabling the Agency[, the Natural Resources Body for Wales] or, as the case may be, SEPA to carry out any assessment or prepare any report which the Agency[, the Natural Resources Body for Wales] or, as the case may be, SEPA is required to carry out or prepare under section 5(3) or 33(3) above.

(3) Subsection (2) above only applies where the Minister who required the assessment to be carried out, or the report to be prepared, has, whether at the time of making the requirement or at any later time, notified the Agency[, the Natural Resources Body for Wales] or, as the case may be, SEPA that the assessment or report appears to him to relate to an incident or possible incident involving or having the

potential to involve—

- (a) serious pollution of the environment,
- (b) serious harm to human health, or
- (c) danger to life or health.

(4) The powers which a person may be authorised to exercise under subsection (1) or (2) above are—

- (a) to enter at any reasonable time (or, in an emergency, at any time and, if need be, by force) any premises which he has reason to believe it is necessary for him to enter;
- (b) on entering any premises by virtue of paragraph (a) above, to take with him—
 - (i) any other person duly authorised by the enforcing authority and, if the authorised person has reasonable cause to apprehend any serious obstruction in the execution of his duty, a constable; and
 - (ii) any equipment or materials required for any purpose for which the power of entry is being exercised;
- (c) to make such examination and investigation as may in any circumstances be necessary;
- (d) as regards any premises which he has power to enter, to direct that those premises or any part of them, or anything in them, shall be left undisturbed (whether generally or in particular respects) for so long as is reasonably necessary for the purpose of any examination or investigation under paragraph (c) above;
- (e) to take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c) above;
- (f) to take samples, or cause samples to be taken, of any articles or substances found in or on any premises which he has power to enter, and of the air, water or land in, on, or in the vicinity of, the premises;
- (g) in the case of any article or substance found in or on any premises which he has power to enter, being an article or substance which appears to him to have caused or to be likely to cause pollution of the environment or harm to human health, to cause it to be dismantled or subjected to any process or test (but not so as to damage or destroy it, unless that is necessary);
- (h) in the case of any such article or substance as is mentioned in paragraph (g) above, to take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely—
 - (i) to examine it, or cause it to be examined, and to do, or cause to be done, to it anything which he has power to do under that paragraph;
 - (ii) to ensure that it is not tampered with before examination of it is completed;
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under the pollution control enactments in the case of the enforcing authority under whose authorisation he acts or in any other proceedings relating to a variation notice, enforcement notice or prohibition notice under those enactments;

- [(iv) to ensure that it is available for use as evidence in any proceedings for an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014;]
- (j) to require any person whom he has reasonable cause to believe to be able to give any information relevant to any examination or investigation under paragraph (c) above—
- [(i)] to answer (in the absence of persons other than a person nominated by that person to be present and any persons whom the authorised person may allow to be present) such questions as the authorised person thinks fit to ask and to sign a declaration of the truth of his answers[; and
- (ii) without prejudice to the generality of paragraph (c) above, to attend at such place and at such reasonable time as the authorised person may specify to answer those questions and sign such a declaration];
- [(ja) in a case only where he is authorised under subsection (1) or (2) above by SEPA, and without prejudice to the generality of paragraphs (c) and (j) above, to require any person whom he has reasonable cause to believe to be able to give any information relevant to an examination or investigation under paragraph (c) above, to provide the person's name, address and date of birth;]
- (k) to require the production of, or where the information is recorded in computerised form, the furnishing of extracts from, any records—
- (i) which are required to be kept under the pollution control enactments for the enforcing authority under whose authorisation he acts, or
- (ii) which it is necessary for him to see for the purposes of an examination or investigation under paragraph (c) above,
- and to inspect and take copies of, or of any entry in, the records;
- [(ka) as regards any premises which by virtue of an authorisation from SEPA he has power to enter, to search the premises and seize and remove any documents found in or on the premises which he has reasonable cause to believe—
- (i) may be required as evidence for the purpose of proceedings relating to an offence under any of the pollution control enactments, or under section 40(1) of the Regulatory Reform (Scotland) Act 2014, which he reasonably believes is being or has been committed; or
- (ii) may assist in determining whether, and if so to what extent, any financial benefit has accrued or is likely to accrue as mentioned in subsection (1)(e) above;]
- (l) to require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as are necessary to enable the authorised person to exercise any of the powers conferred on him by this section;
- (m) any other power for—
- (i) a purpose falling within any paragraph of subsection (1) above, or
- (ii) any such purpose as is mentioned in subsection (2) above,
- which is conferred by regulations made by the Secretary of State.
- (5) The powers which by virtue of subsections (1) and (4) above are conferred in relation to any

premises for the purpose of enabling an enforcing authority to determine whether any provision of the pollution control enactments in the case of that authority is being, or has been, complied with[, or whether an offence under section 40(1) of the Regulatory Reform (Scotland) Act 2014 is being, or has been, committed,] shall include power, in order to obtain the information on which that determination may be made,—

- (a) to carry out experimental borings or other works on those premises; and
- (b) to install, keep or maintain monitoring and other apparatus there.

(6) Except in an emergency, in any case where it is proposed to enter any premises used for residential purposes, or to take heavy equipment on to any premises which are to be entered, any entry by virtue of this section shall only be effected—

- (a) *after the expiration of at least seven days' notice of the proposed entry given to a person who appears to the authorised person in question to be in occupation of the premises in question, and*
- (b) either—
 - (i) with the consent of a person who is in occupation of those premises; or
 - (ii) under the authority of a warrant by virtue of Schedule 18 to this Act.

(7) Except in an emergency, where an authorised person proposes to enter any premises and—

- (a) entry has been refused and he apprehends on reasonable grounds that the use of force may be necessary to effect entry, or
- (b) he apprehends on reasonable grounds that entry is likely to be refused and that the use of force may be necessary to effect entry,

any entry on to those premises by virtue of this section shall only be effected under the authority of a warrant by virtue of Schedule 18 to this Act.

[(7A) An authorised person may not exercise the power in subsection (4)(ka) above to seize and remove documents except under the authority of a warrant by virtue of Schedule 18 to this Act.

(7B) Section 108A applies where documents are removed under that power.

(7C) Subsections (7D) and (7E) apply where a document removed under that power contains information in respect of which a claim to confidentiality of communications could be maintained in legal proceedings.

(7D) The information may not be used—

- (a) in evidence for the purpose of proceedings mentioned in paragraph (ka)(i) of subsection (4) above against a person who would be entitled to make such a claim in relation to the document; or
- (b) to determine whether any financial benefit has accrued or is likely to accrue as mentioned in subsection (1)(e) above.

(7E) The document must be returned to the premises from which it was removed, or to the person who had possession or control of it immediately before it was removed, as soon as reasonably practicable after the information is identified as information described in subsection (7C) above (but the authorised person may retain, or take copies of, any other information contained in the document).]

(8) In relation to any premises belonging to or used for the purposes of the United Kingdom Atomic Energy Authority, subsections (1) to (4) above shall have effect subject to section 6(3) of the Atomic Energy Authority Act 1954 (which restricts entry to such premises where they have been declared to be prohibited places for the purposes of the Official Secrets Act 1911).

(9) The Secretary of State may by regulations make provision as to the procedure to be followed in connection with the taking of, and the dealing with, samples under subsection (4)(f) above.

(10) Where an authorised person proposes to exercise the power conferred by subsection (4)(g) above in the case of an article or substance found on any premises, he shall, if so requested by a person who at the time is present on and has responsibilities in relation to those premises, cause anything which is to be done by virtue of that power to be done in the presence of that person.

(11) Before exercising the power conferred by subsection (4)(g) above in the case of any article or substance, an authorised person shall consult—

- (a) such persons having duties on the premises where the article or substance is to be dismantled or subjected to the process or test, and
- (b) such other persons,

as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do or cause to be done under the power.

(12) No answer given by a person in pursuance of a requirement imposed under subsection (4)(j) above shall be admissible in evidence in England and Wales against that person in any proceedings, or in Scotland against that person in any criminal proceedings[, except in a case where the proceedings relate to—

- (a) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements and declarations), or
- (b) another offence where in giving evidence the person makes a statement inconsistent with the answer].

(13) Nothing in this section shall be taken to compel the production by any person of a document of which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the High Court or, in relation to Scotland, on an order for the production of documents in an action in the Court of Session.

(14) Schedule 18 to this Act shall have effect with respect to the powers of entry and related powers which are conferred by this section.

(15) In this section—

“authorised person” means a person authorised under subsection (1) or (2) above;

[“document” includes any thing in which information of any description is recorded (by any means) and any part of such a thing;]

[“domestic property” has the meaning given by section 75(5)(a) of the Environmental Protection Act 1990;]

“emergency” means a case in which it appears to the authorised person in question—

- (a) that there is an immediate risk of serious pollution of the environment or serious harm to human health, or

(b) that circumstances exist which are likely to endanger life or health,

and that immediate entry to any premises is necessary to verify the existence of that risk or those circumstances or to ascertain the cause of that risk or those circumstances or to effect a remedy;

“enforcing authority” means—

- (a) the Secretary of State;
- (b) the Agency;
- [(bza) the Natural Resources Body for Wales;]
- [(ba) a waste collection authority;]
- (c) SEPA; or
- (d) a local enforcing authority;

[“English waste collection authority” has the same meaning as in section 45A of the Environmental Protection Act 1990;]

“local enforcing authority” means—

- (a) a local enforcing authority, within the meaning of Part I of the Environmental Protection Act 1990;
- (b) a local authority, within the meaning of Part IIA of that Act, in its capacity as an enforcing authority for the purposes of that Part;
- (c) a local authority for the purposes of Part IV of this Act or regulations under that Part;
- [(d) a local authority for the purposes of regulations under section 2 of the Pollution Prevention and Control Act 1999 extending to England and Wales;]

“mobile plant” means plant which is designed to move or to be moved whether on roads or otherwise;

“pollution control enactments”, in relation to an enforcing authority, means the enactments and instruments relating to the pollution control functions of that authority [(including any enactments comprised in, or in instruments made under, an Act of the Scottish Parliament relating to those functions)];

“pollution control functions”, in relation to the Agency[, the Natural Resources Body for Wales] or SEPA, means the functions conferred or imposed on it by or under—

- (a) *the Alkali, &c, Works Regulation Act 1906*;
- (b) . . .
- (c) . . .
- (d) Part I of the Health and Safety at Work etc Act 1974;
- (e) Parts I, IA and II of the Control of Pollution Act 1974;
- (f) the Control of Pollution (Amendment) Act 1989;

- (g) Parts I, II and IIA of the Environmental Protection Act 1990 (integrated pollution control, waste on land and contaminated land);
- (h) Chapter III of Part IV of the Water Industry Act 1991 (special category effluent);
- (j) Part III and sections 161 to 161D of the Water Resources Act 1991;
- (k) section 19 of the Clean Air Act 1993;
- (l) *the Radioactive Substances Act 1993*;
- (m) regulations made by virtue of section 2(2) of the European Communities Act 1972, to the extent that the regulations relate to pollution;
- (n) in relation to SEPA, regulations under section 2 of the Pollution Prevention and Control Act 1999 [or section 18 of the Regulatory Reform (Scotland) Act 2014];]

[and, in relation to the Agency [or the Natural Resources Body for Wales], includes the functions conferred or imposed on, or transferred to, it under section 2 of the Pollution Prevention and Control Act 1999 [but, in relation to the Natural Resources Body for Wales, does not include any functions which were exercisable by the Countryside Council for Wales or the Forestry Commissioners immediately before 1 April 2013 and are functions of that Body by virtue of the Natural Resources Body for Wales (Functions) Order 2013];]

["pollution control functions", in relation to a waste collection authority, means[—

- (a) in relation to an English waste collection authority, the functions conferred or imposed on it by or under Part 2 of the Environmental Protection Act 1990 (other than sections 45, 45A and 46 of that Act so far as relating to the collection of household waste from domestic property); and
- (b) in relation to any other waste collection authority,] the functions [conferred or imposed on it by or under Part 2] of the Environmental Protection Act 1990;]

"pollution control functions", in relation to a local enforcing authority, means the functions conferred or imposed on, or transferred to, that authority—

- (a) by or under Part I or IIA of the Environmental Protection Act 1990;
- (b) by or under regulations made by virtue of Part IV of this Act; or
- (c) by or under regulations made by virtue of section 2(2) of the European Communities Act 1972, to the extent that the regulations relate to pollution;

[and, in relation to an authority in England or Wales, includes the functions conferred or imposed on, or transferred to, that authority under section 2 of the Pollution Prevention and Control Act 1999;]

"pollution control functions", in relation to the Secretary of State, means any functions which are conferred or imposed upon him by or under any enactment or instrument and which relate to the control of pollution;

"premises" includes any land, vehicle, vessel or mobile plant;

["waste collection authority" shall be construed in accordance with section 30(3)(a), (b) and (bb) of the Environmental Protection Act 1990].

(16) Any power to make regulations under this section shall be exercisable by statutory instrument; and a statutory instrument containing any such regulations shall be subject to annulment pursuant to a resolution of either House of Parliament.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Sub-s (1): in para (b) word “or” in italics repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (2)(a)(i).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (1): paras (d), (e) inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (2)(a)(ii).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (1A): inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (2)(b).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (2): words “, the Natural Resources Body for Wales” in square brackets in each place they occur inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 382(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (3): words “, the Natural Resources Body for Wales” substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 382(1), (2).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (4): para (h)(iv) inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (2)(c)(i).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (4): para (j)(i) designated as such, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (2)(c)(ii).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (4): para (j)(ii) and word “; and” immediately preceding it inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (2)(c)(ii).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (4): para (ja) inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (2)(c)(iii).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (4): para (ka) inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (2)(c)(iv).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (5): words from “, or whether an” to “has been, committed,” in square brackets inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (2)(d).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (6): para (a) repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (2)(e).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-ss (7A)–(7E): inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (2)(f).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (12): words from “, except in a case” to “with the answer” in square brackets inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (2)(g).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (15): definition “document” inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (2)(h)(i).
 Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.
 Date in force: to be appointed: see the Regulatory Reform (Scotland) Act 2014, s 61(2).

Sub-s (15): definition “domestic property” inserted, in relation to England and Wales, by the Protection of Freedoms Act 2012, s 39(2), Sch 2, Pt 1, para 3(1), (2).
 Date in force: 1 July 2012: see the Protection of Freedoms Act 2012, s 120(4)(a).

Sub-s (15): in definition “enforcing authority” para (bza) inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 382(1), (3)(a).
 Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (15): in definition “enforcing authority” para (ba) inserted, in relation to England and Wales, by the Anti-social Behaviour Act 2003, s 55(6), (7).
 Date in force (in relation to England): 31 March 2004: see SI 2004/690, art 3(h).
 Date in force (in relation to Wales): 31 March 2004: see SI 2004/999, art 2(m).

Sub-s (15): definition “English waste collection authority” inserted, in relation to England and Wales, by the Protection of Freedoms Act 2012, s 39(2), Sch 2, Pt 1, para 3(1), (3).
 Date in force: 1 July 2012: see the Protection of Freedoms Act 2012, s 120(4)(a).

Sub-s (15): in definition “local enforcing authority” para (d) inserted by SI 2000/1973, reg 39, Sch 10, Pt 1, paras 14, 16(a).
 Date in force: 1 August 2000: see SI 2000/1973, reg 1(1).

Sub-s (15): in definition “pollution control enactments” words from “(including any enactments” to “to those functions)” in square brackets inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 6, para 43(1), (10)(a).
 Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (15): in definition “pollution control functions”, in relation to the Agency, the Natural Resources Body for Wales or SEPA, words “, the Natural Resources Body for Wales” inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 382(1), (3)(b)(i).
 Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (15): in definition “pollution control functions”, in relation to the Agency, the Natural Resources Body for Wales or SEPA, para (a) repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (2)(h)(ii).
 Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (15): in definition “pollution control functions”, in relation to the Agency, the Natural Resources Body for Wales or SEPA, paras (b), (c) repealed by SSI 2006/181, art 2, Schedule, Pt IV, para 8(1), (4).
 Date in force: 1 April 2006: see SSI 2006/181, art 1.

Sub-s (15): in definition “pollution control functions”, in relation to the Agency, the Natural Resources Body for Wales or SEPA, para (l) repealed, in relation to England and Wales, by SI 2010/675, regs 107, 109(1), Sch 26, Pt 1, para 13(1), (5), Sch 28.
 Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).

Sub-s (15): in definition “pollution control functions”, in relation to the Agency, the Natural Resources Body for Wales or SEPA, para (n) inserted, in relation to Scotland, by SSI 2000/323, reg 36, Sch 10, Pt 1, para 5(1), (3).
 Date in force: 28 September 2000: see SSI 2000/323, reg 1(1).

Sub-s (15): in definition “pollution control functions”, in relation to the Agency, the Natural Resources Body for Wales or SEPA, in para (n) words “or section 18 of the Regulatory Reform (Scotland) Act 2014” in square brackets inserted by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 1, para 5(1), (3).
 Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (15): in definition “pollution control functions”, in relation to the Agency, the Natural Resources Body for Wales or SEPA, words in square brackets beginning with the words “and, in relation to” inserted in relation to England and Wales by SI 2000/1973, reg 39, Sch 10, Pt 1, paras

14, 16(b); a corresponding amendment has been made in relation to Scotland by SSI 2000/323, reg 36, Sch 10, Pt 1, para 5(1), (3).

Date in force (in relation to England and Wales): 1 August 2000: see SI 2000/1973, reg 1(1).

Date in force (in relation to Scotland): 28 September 2000: see SSI 2000/323, reg 1(1).

Sub-s (15): in definition “pollution control functions”, in relation to the Agency, the Natural Resources Body for Wales or SEPA, words “or the Natural Resources Body for Wales” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 382(1), (3)(b)(ii).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (15): in definition “pollution control functions”, in relation to the Agency, the Natural Resources Body for Wales or SEPA, words from “but, in relation” to “Natural Resources Body for Wales (Functions) Order 2013” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 382(1), (3)(b)(iii).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (15): definition “pollution control functions” in relation to a waste collection authority inserted, in relation to England and Wales, by the Anti-social Behaviour Act 2003, s 55(6), (8).

Date in force (in relation to England): 31 March 2004: see SI 2004/690, art 3(h).

Date in force (in relation to Wales): 31 March 2004: see SI 2004/999, art 2(m).

Sub-s (15): in definition “pollution control functions” in relation to a waste collection authority, words from “— (a) in relation” to “waste collection authority,” in square brackets inserted, in relation to England and Wales, by the Protection of Freedoms Act 2012, s 39(2), Sch 2, Pt 1, para 3(1), (4).

Date in force: 1 July 2012: see the Protection of Freedoms Act 2012, s 120(4)(a).

Sub-s (15): in definition “pollution control functions” in relation to a waste collection authority, words “conferred or imposed on it by or under Part 2” in square brackets substituted by the Clean Neighbourhoods and Environment Act 2005, s 53.

Date in force (in relation to England): 18 October 2005: see SI 2005/2896, art 3(h).

Date in force (in relation to Wales): 16 March 2006: see SI 2006/768, art 2(b).

Sub-s (15): in definition “pollution control functions”, in relation to a local enforcing authority, words from “and, in relation to” to “Control Act 1999;” in square brackets inserted by SI 2000/1973, reg 39, Sch 10, Pt 1, paras 14, 16(c).

Date in force: 1 August 2000: see SI 2000/1973, reg 1(1).

Sub-s (15): definition “waste collection authority” inserted, in relation to England and Wales, by the Anti-social Behaviour Act 2003, s 55(6), (9).

Date in force (in relation to England): 31 March 2004: see SI 2004/690, art 3(h).

Date in force (in relation to Wales): 31 March 2004: see SI 2004/999, art 2(m).

See Further

See further, the application of this section, with modifications, in relation to enforcement powers: the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 23, Sch 1, paras 1, 2.

See further, in relation to the application of sub-s (15) above, with modifications, in relation to harm so far as attributable to any radioactivity possessed by any substance: the Radioactive Contaminated Land (Modification of Enactments) (England) Regulations 2006, SI 2006/1379, reg 18.

See further, in relation to the application of sub-s (15) above, with modifications, in relation to harm so far as attributable to any radioactivity possessed by any substance: the Radioactive Contaminated Land (Modification of Enactments) (Wales) Regulations 2006, SI 2006/2988, reg 18.

See further, in relation to the application of this section, with modifications, for the purposes of functions under the Producer Responsibility Obligations (Packaging Waste) Regulations 2007: the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 35(1)–(4).

See further, in relation to England and Wales, in relation to the application of this section, for the purposes of enforcement powers and functions: the Bathing Water Regulations 2008, SI 2008/1097, reg 16(4).

See further, in relation to application of this section where the Secretary of State delegates any function under the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing

Products Regulations 2005, reg 7, to a local authority in England: the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2005, SI 2005/2773, reg 7(4A), (4B) (as inserted by SI 2009/3145, reg 2).

See further, in relation to the application of this section, for the purposes of enforcement: the Bathing Water Regulations 2013, SI 2013/1675, reg 16(5).

See further, in relation to the application of sub-s (15) above, with modifications, in relation to harm, or pollution of the water environment, so far as is attributable to any radioactivity possessed by any substance: the Radioactive Contaminated Land (Scotland) Regulations 2007, SSI 2007/179, reg 16; for further effect see reg 19 thereof (as inserted by SI 2007/3240, reg 3(1), (9)).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

[108A Procedure where documents removed]

[(1) An authorised person (within the meaning of subsection (15) of section 108 of this Act) who removes any documents under the power in subsection (4)(ka) of that section shall, if requested to do so by a person mentioned in subsection (2) below, provide that person with a record of what the authorised person removed.

(2) The persons are—

- (a) a person who was the occupier of any premises from which the documents were removed at the time of their removal;
- (b) a person who had possession or control of the documents immediately before they were removed.

(3) The authorised person shall provide the record within a reasonable time of the request for it.

(4) A person who had possession or control of documents immediately before they were removed may apply to SEPA—

- (a) for access to the documents; or
- (b) for a copy of them.

(5) SEPA shall—

- (a) allow the applicant supervised access to the documents for the purpose of copying them or information contained in them; or
- (b) copy the documents or information contained in them (or cause the documents or information to be copied) and provide the applicant with such copies within a reasonable time of the application.

(6) But SEPA need not comply with subsection (5) above where it has reasonable grounds for believing that to do so might prejudice—

- (a) any investigation for a purpose mentioned in paragraph (a), (d) or (e) of subsection (1) of section 108 of this Act; or
- (b) any criminal proceedings which may be brought as a result of any such investigation.

(7) In subsection (5) above, “supervised access” means access under the supervision of a person approved by SEPA.

(8) A person who claims that an authorised person or SEPA has failed to comply with the requirements of subsection (1), (3) or (5) above may apply to the sheriff for an order under subsection (10) below.

(9) An application under subsection (8) above—

- (a) relating to a failure to comply with the requirements of subsection (1) or (3) above may be made only by a person who is entitled to make a request under subsection (1) above;
- (b) relating to a failure to comply with subsection (5) above may be made only by a person who had possession or control of the documents immediately before they were removed.

(10) The sheriff may, if satisfied that the authorised person or SEPA has failed to comply with the requirements of subsection (1), (3) or (5) above, order the person, or as the case may SEPA, to comply with the requirements within such time and in such manner as may be specified in the order.]

NOTES

Amendment

Inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (3).
Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

109 Power to deal with cause of imminent danger of serious pollution etc

(1) Where, in the case of any article or substance found by him on any premises which he has power to enter, an authorised person has reasonable cause to believe that, in the circumstances in which he finds it, the article or substance is a cause of imminent danger of serious pollution of the environment or serious harm to human health, he may seize it and cause it to be rendered harmless (whether by destruction or otherwise).

(2) As soon as may be after any article or substance has been seized and rendered harmless under this section, the authorised person shall prepare and sign a written report giving particulars of the circumstances in which the article or substance was seized and so dealt with by him, and shall—

- (a) give a signed copy of the report to a responsible person at the premises where the article or substance was found by him; and
- (b) unless that person is the owner of the article or substance, also serve a signed copy of the report on the owner;

and if, where paragraph (b) above applies, the authorised person cannot after reasonable inquiry ascertain the name or address of the owner, the copy may be served on him by giving it to the person to whom a copy was given under paragraph (a) above.

(3) In this section, “authorised person” has the same meaning as in section 108 above.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

110 Offences

(1) It is an offence for a person intentionally to [assault, hinder or] obstruct an authorised person in the exercise or performance of his powers or duties.

- (2) It is an offence for a person, without reasonable excuse,—
- (a) to fail to comply with any requirement imposed under section 108 above;
 - (b) to fail or refuse to provide facilities or assistance or any information or to permit any inspection reasonably required by an authorised person in the execution of his powers or duties under or by virtue of that section; or
 - (c) to prevent any other person from appearing before an authorised person, or answering any question to which an authorised person may require an answer, pursuant to subsection (4) of that section.
- (3) It is an offence for a person falsely to pretend to be an authorised person.
- (4) A person guilty of an offence under subsection (1) above shall be liable—
- (a) in the case of an offence of [assaulting, hindering or] obstructing an authorised person in the execution of his powers under section 109 above—
 - (i) on summary conviction, to a fine not exceeding the statutory maximum [or to imprisonment for a term not exceeding 12 months, or to both];
 - (ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both;
 - (b) in any other case, on summary conviction, to a fine not exceeding *level 5 on the standard scale* [the prescribed sum within the meaning of section 225(8) of the Criminal Procedure (Scotland) Act 1995 or to imprisonment for a term not exceeding 12 months, or to both].
- (5) A person guilty of an offence under subsection (2) or (3) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- [(5A) A person may be convicted of the offence under subsection (1) above of hindering or obstructing even though it is—
- (a) effected by means other than physical means, or
 - (b) effected by action directed only at any vehicle, apparatus, equipment or other thing used or to be used by an authorised person.
- (5B) Subsection (5C) applies where, in the trial of a person (“the accused”) charged in summary proceedings with an offence under subsection (1) above, the court—
- (a) is not satisfied that the accused committed the offence, but
 - (b) is satisfied that the accused committed an offence under subsection (2) above.
- (5C) The court may acquit the accused of the charge and, instead, find the accused guilty of an offence under subsection (2) above.]
- (6) In this section—
- “authorised person” means a person authorised under section 108 above and includes a person designated under paragraph 2 of Schedule 18 to this Act;
- “powers and duties” includes powers or duties exercisable by virtue of a warrant under Schedule 18 to this Act.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Sub-s (1): words “assault, hinder or” in square brackets inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (6)(a); for transitional provision see s 57, Sch 3, Pt 5, para 30.

Date in force (in relation to Scotland): 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Date in force (in relation to England and Wales): to be appointed: see the Regulatory Reform (Scotland) Act 2014, s 61(2).

Sub-s (4): in para (a) words “assaulting, hindering or” in square brackets inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (6)(b)(i); for transitional provision see s 57, Sch 3, Pt 5, para 30.

Date in force (in relation to Scotland): 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Date in force (in relation to England and Wales): to be appointed: see the Regulatory Reform (Scotland) Act 2014, s 61(2).

Sub-s (4): in para (a)(i) words from “or to imprisonment” to “or to both” in square brackets inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (6)(b)(ii); for transitional provision see s 57, Sch 3, Pt 5, para 30.

Date in force (in relation to Scotland): 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Date in force (in relation to England and Wales): to be appointed: see the Regulatory Reform (Scotland) Act 2014, s 61(2).

Sub-s (4): in para (b) words “level 5 on the standard scale” in italics repealed and subsequent words in square brackets substituted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (6)(b)(iii); for transitional provision see s 57, Sch 3, Pt 5, para 30.

Date in force (in relation to Scotland): 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Date in force (in relation to England and Wales): to be appointed: see the Regulatory Reform (Scotland) Act 2014, s 61(2).

Sub-ss (5A)–(5C): inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (6)(c); for transitional provision see s 57, Sch 3, Pt 5, para 30.

Date in force (in relation to Scotland): 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Date in force (in relation to England and Wales): to be appointed: see the Regulatory Reform (Scotland) Act 2014, s 61(2).

See Further

See further, in relation to application of this section where the Secretary of State delegates any function under the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2005, reg 7, to a local authority in England: the Volatile Organic Compounds in Paints, Varnishes and Vehicle Refinishing Products Regulations 2005, SI 2005/2773, reg 7(4A), (4B) (as inserted by SI 2009/3145, reg 2).

Evidence

111 Evidence in connection with certain pollution offences

(1) ...

(2) Information provided or obtained pursuant to or by virtue of a condition of a relevant licence (including information so provided or obtained, or recorded, by means of any apparatus) shall be admissible in evidence in any proceedings, whether against the person subject to the condition or any other person.

[(2A) Information provided or obtained pursuant to or by virtue of relevant regulations (including information so provided or obtained, or recorded, by means of any apparatus) shall be admissible in evidence in any proceedings, whether against the person subject to a requirement arising under or by virtue of the regulations or any other person.]

(3) For the purposes of [subsections (2) and (2A)] above, apparatus shall be presumed in any proceedings to register or record accurately, unless the contrary is shown or [provision otherwise is made by the relevant licence or by virtue of the relevant regulations].

(4) Where—

- (a) by virtue of a condition of a relevant licence, an entry is required to be made in any record as to the observance of any condition of the relevant licence [or by virtue of relevant regulations] [or compliance with any requirement arising under or by virtue of the regulations], and
- (b) the entry has not been made,

that fact shall be admissible in any proceedings as evidence that that condition has not been observed [or that requirement has not been complied with].

(5) In this section—

“apparatus” includes any meter or other device for measuring, assessing, determining, recording or enabling to be recorded, the volume, temperature, radioactivity, rate, nature, origin, composition or effect of any substance, flow, discharge, emission, deposit or abstraction;

“condition of a relevant licence” includes any requirement to which a person is subject under, by virtue of or in consequence of a relevant licence;

“environmental licence” has the same meaning as it has in Part I above as it applies in relation to the Agency[, the Natural Resources Body for Wales] or SEPA, as the case may be;

“relevant licence” means—

- (a) any environmental licence;
- (b) any consent under Part II of the Sewerage (Scotland) Act 1968 to make discharges of trade effluent;
- (c) any agreement under section 37 of that Act with respect to, or to any matter connected with, the reception, treatment or disposal of such effluent;
- (d) any consent under Chapter III of Part IV of the Water Industry Act 1991 to make discharges of special category effluent; or
- (e) any agreement under section 129 of that Act with respect to, or to any matter connected with, the reception or disposal of such effluent;

[“relevant regulations” means regulations made for the purpose of implementing the EU ETS Directive (as defined by section 56)].

(6) . . .

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Sub-s (1): repealed by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Sub-s (2A): inserted by SI 2012/2788, reg 8(1), (2).

Date in force: 3 December 2012: see SI 2012/2788, reg 1.

Sub-s (3): words “subsections (2) and (2A)” in square brackets substituted by SI 2012/2788, reg 8(1), (3)(a).

Date in force: 3 December 2012: see SI 2012/2788, reg 1.

Sub-s (3): words from “provision otherwise is” to “the relevant regulations” in square brackets substituted by SI 2012/2788, reg 8(1), (3)(b).

Date in force: 3 December 2012: see SI 2012/2788, reg 1.

Sub-s (4): in para (a) words “or by virtue of relevant regulations” in square brackets inserted by SI 2012/2788, reg 8(1), (4)(a)(i).

Date in force: 3 December 2012: see SI 2012/2788, reg 1.

Sub-s (4): in para (a) words from “or compliance with” to “of the regulations” in square brackets inserted by SI 2012/2788, reg 8(1), (4)(a)(ii).

Date in force: 3 December 2012: see SI 2012/2788, reg 1.

Sub-s (4): words “or that requirement has not been complied with” in square brackets inserted by SI 2012/2788, reg 8(1), (4)(b).

Date in force: 3 December 2012: see SI 2012/2788, reg 1.

Sub-s (15): in definition “environmental licence” words “, the Natural Resources Body for Wales” in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 383.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (5): definition “relevant regulations” inserted by SI 2012/2788, reg 8(1), (5).

Date in force: 3 December 2012: see SI 2012/2788, reg 1.

Sub-s (6): inserts the Environmental Protection Act 1990, s 25(3).

Offences

112 Amendment of certain offences relating to false or misleading statements or false entries

Schedule 19 to this Act shall have effect.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Information

113 Disclosure of information

(1) Notwithstanding any prohibition or restriction imposed by or under any enactment or rule of law, information of any description may be disclosed—

- (a) by [a relevant agency] to a Minister of the Crown, [another relevant agency] or a local enforcing authority,
- (b) by a Minister of the Crown to [a relevant agency], another Minister of the Crown or a local enforcing authority, . . .
- (c) by a local enforcing authority to a Minister of the Crown, [a relevant agency] or another local enforcing authority, [or
- (d) by the Natural Resources Body for Wales to the Forestry Commissioners,]

for the purpose of facilitating the carrying out by [any of the relevant agencies] of any of its functions, by any such Minister of any of his environmental functions or by any local enforcing authority of any of its relevant functions; and no person shall be subject to any civil or criminal liability in consequence of any disclosure made by virtue of this subsection.

[(1A) Nothing in this section authorises the disclosure by SEPA to any person of protected taxpayer information which was obtained by SEPA in connection with a function of Revenue Scotland delegated to it by Revenue Scotland under section 4(1)(b) of the Revenue Scotland and Tax Powers Act 2014 (asp 16).]

(2) Nothing in this section shall authorise the disclosure to a local enforcing authority by a [relevant agency] or another local enforcing authority of information—

- (a) disclosure of which would, in the opinion of a Minister of the Crown, be contrary to the interests of national security; or
- (b) which was obtained under or by virtue of the Statistics of Trade Act 1947 and which was disclosed to a [relevant agency] or any of its officers by the Secretary of State.

(3) No information disclosed to any person under or by virtue of this section shall be disclosed by that person to any other person otherwise than in accordance with the provisions of this section, or any provision of any other enactment which authorises or requires the disclosure, if that information is information—

- (a) which relates to a trade secret of any person or which otherwise is or might be commercially confidential in relation to any person; or
- (b) whose disclosure otherwise than under or by virtue of this section would, in the opinion of a Minister of the Crown, be contrary to the interests of national security.

(4) Any authorisation by or under this section of the disclosure of information by or to any person shall also be taken to authorise the disclosure of that information by or, as the case may be, to any officer of his who is authorised by him to make the disclosure or, as the case may be, to receive the information.

(5) In this section—

. . .

["enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament;]

["the environment" means all, or any, of the following media, namely, the air, water and land (and the medium of air includes the air within buildings and the air within other natural or man-made structures above or below ground);]

"environmental functions", in relation to a Minister of the Crown, means any function of that Minister, whether conferred or imposed under or by virtue of any enactment or otherwise, relating to the

environment; and

“local enforcing authority” means—

(a) any local authority within the meaning of Part IIA of the Environmental Protection Act 1990, and the “relevant functions” of such an authority are its functions under or by virtue of that Part;

[(aa) in relation to England and Wales, any local authority within the meaning of regulations under section 2 of the Pollution Prevention and Control Act 1999;]

(b) any local authority within the meaning of Part IV of this Act, and the “relevant functions” of such an authority are its functions under or by virtue of that Part; [or]

(c) in relation to England, any county council for an area for which there are district councils, and the “relevant functions” of such a county council are its functions under or by virtue of Part IV of this Act; or

(d) in relation to England and Wales, any local enforcing authority within the meaning of section 1(7) of the Environmental Protection Act 1990, and the “relevant functions” of such an authority are its functions under or by virtue of Part I of that Act;

[“protected taxpayer information” has the meaning given by section 14 of the Revenue Scotland and Tax Powers Act 2014 (asp 16);]

[“relevant agency” means the Agency, the Natural Resources Body for Wales or SEPA].

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Sub-s (1): in paras (a)–(c) words “a relevant agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 384(1), (2)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2).

Sub-s (1): in para (a) words “another relevant agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 384(1), (2)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): in para (b) word omitted repealed by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 384(1), (2)(c).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): para (d) and word “or” immediately preceding it inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 384(1), (2)(d).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1): words “any of the relevant agencies” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 384(1), (2)(e).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (1A): inserted, in relation to Scotland, by the Revenue Scotland and Tax Powers Act 2014, s 256, Sch 4, para 2(1), (3)(a).

Date in force: 1 January 2015: see SSI 2014/370, art 2, Schedule.

Sub-s (2): words “relevant agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 384(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (2): in para (b) words “relevant agency” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 384(1), (3).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (5): definition “new Agency” (omitted) repealed by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 384(1), (4)(a).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Sub-s (5): definition “enactment” inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 6, para 43(1), (11).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1).

Sub-s (5): definition “the environment” substituted by the Pollution Prevention and Control Act 1999, s 6(1), Sch 2, paras 14, 18(1), (2).

Date in force (in relation to England and Wales): 21 March 2000: see SI 2000/800, art 2.

Date in force (in relation to Scotland): 29 September 2000: see SSI 2000/322, art 2.

Sub-s (5): in definition “local enforcing authority” para (aa) inserted by SI 2000/1973, reg 39, Sch 10, Pt 1, paras 14, 17.

Date in force: 1 August 2000: see SI 2000/1973, reg 1(1).

Sub-s (5): in definition “local enforcing authority” in para (b) word “or” in square brackets inserted by the Pollution Prevention and Control Act 1999, s 6(1), Sch 2, paras 14, 18(1), (3).

Date in force (in relation to England and Wales): 21 March 2000: see SI 2000/800, art 2.

Date in force (in relation to Scotland): 29 September 2000: see SSI 2000/322, art 2.

Sub-s (5): definition “protected taxpayer information” inserted, in relation to Scotland, by the Revenue Scotland and Tax Powers Act 2014, s 256, Sch 4, para 2(1), (3)(b).

Date in force: 1 January 2015: see SSI 2014/370, art 2, Schedule.

Sub-s (5): definition “relevant agency” inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 384(1), (4)(b).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Transfer of Functions

See further in relation to the exercise of functions under this section by the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Functions under this section: by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 3, Sch 2, functions under sub-ss (2) and (3) which were exercisable by the Secretary of State are, in so far as they are exercisable in or as regards Scotland, exercisable by the Scottish Ministers acting concurrently with the Secretary of State, subject to the requirement that such functions shall only be exercisable after consultation with the Secretary of State.

Appeals

114 Power of Secretary of State to delegate his functions of determining, or to refer matters involved in, appeals

- (1) The Secretary of State may—
 - (a) appoint any person to exercise on his behalf, with or without payment, any function to which this paragraph applies; or
 - (b) refer any item to which this paragraph applies to such person as the Secretary of State may

appoint for the purpose, with or without payment.

(2) The functions to which paragraph (a) of subsection (1) above applies are any of the Secretary of State's functions of determining—

(a) an appeal under—

[(i) *section 42B(5) of the Control of Pollution Act 1974,*

(ii) section 4 of the Control of Pollution (Amendment) Act 1989,

(iii) section 15, 22(5), 43, 62(3)(c), 66(5), 78L or 78T of the Environmental Protection Act 1990,

(iv) . . .

(v) section [36A,] 43, [51,] 91, 92, 96, 161C[, 191B(5) or 199A] of the Water Resources Act 1991,

(vi) *section 26 of the Radioactive Substances Act 1993 against any decision of, or notice served by, SEPA,*

(vii) *paragraph 6 of Schedule 5 to the Waste Management Licensing Regulations 1994,*

[(vii) paragraph 6 of Schedule 5 to the Waste Management Licensing (Scotland) Regulations 2011,]

[(viii) regulations under section 2 of the Pollution Prevention and Control Act 1999 extending to England and Wales,]

[(ix) section 3 of the Water Act 2003,]

or any matter involved in such an appeal;

(b) . . .

(3) The items to which paragraph (b) of subsection (1) above applies are—

(a) any matter involved in an appeal falling within subsection (2)(a) above;

(b) *any of the questions which fall to be determined by the Secretary of State under section 39(1) or section 49(4) of the Control of Pollution Act 1974.*

(4) Schedule 20 to this Act shall have effect with respect to appointments under subsection (1)(a) above.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Sub-s (2): para (a)(i) substituted by SSI 2006/181, art 2, Schedule, Pt IV, para 8(1), (5)(a).

Date in force: 1 April 2006: see SSI 2006/181, art 1.

Sub-s (2): para (a)(i) repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act

2014, s 57, Sch 3, Pt 5, para 29(1), (7).
 Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (2): in para (a)(iii) reference to “43,” and reference to “66(5),” in italics repealed, in relation to England and Wales, by SI 2007/3538, reg 74(2), Sch 23.
 Date in force: 6 April 2008: see SI 2007/3538, reg 1(1)(b); for savings see reg 72(2), (10) thereof.

Sub-s (2): para (a)(iv) repealed by SSI 2006/181, art 2, Schedule, Pt IV, para 8(1), (5)(b).
 Date in force: 1 April 2006: see SSI 2006/181, art 1.

Sub-s (2): in para (a)(v) reference to “36A,” in square brackets inserted by the Water Act 2003, s 13(4).
 Date in force: 1 April 2006: see SI 2006/984, art 2(h).

Sub-s (2): in para (a)(v) reference to “51,” in square brackets inserted by the Water Act 2003, s 21(4).
 Date in force: 1 April 2006 (except in respect of impounding licences regardless of when the impounding works were constructed, before that date): see SI 2006/984, art 2(k) and the Water Act 2003, s 21(5).

Sub-s (2): in para (a)(v) reference to “91,” in italics repealed, in relation to England and Wales, by SI 2010/675, regs 107, 109(1), Sch 26, Pt 1, para 13(1), (6)(a), Sch 28.
 Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).

Sub-s (2): in para (a)(v) words “, 191B(5) or 199A” in square brackets substituted by the Water Act 2003, s 8(7).
 Date in force: 1 April 2006: see SI 2006/984, art 2(e).

Sub-s (2): para (a)(vi) repealed, in relation to England and Wales, by SI 2010/675, regs 107, 109(1), Sch 26, Pt 1, para 13(1), (6)(b), Sch 28.
 Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).

Sub-s (2): para (a)(vii) substituted, in relation to Scotland, by SSI 2011/226, reg 8, Schedule, Pt 1, para 1.
 Date in force: 27 March 2011: see SSI 2011/226, reg 1(1).

Sub-s (2): para (a)(viii) inserted by SI 2000/1973, reg 39, Sch 10, Pt 1, paras 14, 18; a corresponding amending amendment has been made in relation to Scotland by SSI 2000/323, reg 36, Sch 10, Pt 1, para 5(1), (4).
 Date in force (in relation to England and Wales): 1 August 2000: see SI 2000/1973, reg 1(1).
 Date in force (in relation to Scotland): 28 September 2000: see SSI 2000/323, reg 1(1).

Sub-s (2): para (a)(viii) amended, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 1, para 5(1), (4).
 Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Sub-s (2): para (a)(ix) inserted in relation to England and Wales by the Water Act 2003, s 3(13); a corresponding amendment has been made in relation to Scotland by SSI 2006/181, art 2, Schedule, Pt IV, para 8(1), (5)(c).
 Date in force (in relation to Scotland): 1 April 2006: see SSI 2006/181, art 1.
 Date in force (in relation to England and Wales): 1 April 2006: see SI 2006/984, art 2(c).

Sub-s (2): para (b) repealed by SSI 2006/181, art 2, Schedule, Pt IV, para 8(1), (5)(d).
 Date in force: 1 April 2006: see SSI 2006/181, art 1.

Sub-s (3): para (b) repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (7).
 Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Crown application

115 Application of this Act to the Crown

- (1) Subject to the provisions of this section, this Act shall bind the Crown.
- (2) Part III of this Act and any amendments, repeals and revocations made by other provisions of this Act (other than those made by Schedule 21, which shall bind the Crown) bind the Crown to the extent that the enactments to which they relate bind the Crown.
- (3) No contravention by the Crown of any provision made by or under this Act shall make the Crown criminally liable; but the High Court or, in Scotland, the Court of Session may, on the application of the Agency[, the Natural Resources Body for Wales] or, in Scotland, SEPA, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (4) Notwithstanding anything in subsection (3) above, any provision made by or under this Act shall apply to persons in the public service of the Crown as it applies to other persons.
- (5) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any powers of entry exercisable in relation to them specified in the certificate, that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises; and in this subsection "Crown premises" means premises held or used by or on behalf of the Crown.
- (6) Nothing in this section shall be taken as in any way affecting Her Majesty in her private capacity; and this subsection shall be construed as if section 38(3) of the Crown Proceedings Act 1947 (interpretation of references to Her Majesty in her private capacity) were contained in this Act.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Sub-ss (1)–(4), (6): Appointment (for certain purposes): 1 April 1996: see SI 1995/2950, art 3(1).

Sub-ss (1)–(4), (6): Appointment (for remaining purposes): 1 April 1996: see SI 1996/186, art 3.

Sub-s (5): Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Sub-s (3): words ", the Natural Resources Body for Wales" in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 385.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Transfer of Functions

See further in relation to the exercise of functions under this section by the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Functions under this section: by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 1999, SI 1999/1750, art 3, Sch 2, functions under sub-s (5) which were exercisable by the Secretary of State are, in so far as they are exercisable in or as regards Scotland, exercisable by the Scottish Ministers acting concurrently with the Secretary of State, subject to the requirement that such functions shall only be exercisable after consultation with the Secretary of State.

116 Application of certain other enactments to the Crown

Schedule 21 to this Act shall have effect.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment (for certain purposes): 21 September 1995: see SI 1995/1983, art 3.

Appointment (for certain purposes): 1 July 1997: see SI 1997/1626, art 2(b); for transitional provisions see art 3 thereof.

Appointment (for certain purposes): 8 April 1998: see SI 1998/781, art 2; for transitional provisions see art 3 thereof.

Appointment (in relation to England and Wales for certain purposes): 1 December 2000: see SI 2000/3033, art 2.

Isles of Scilly

117 Application of this Act to the Isles of Scilly

(1) Subject to sections 77, 80 and 89 above and the provisions of any order under this section or section 89 above, nothing in this Act shall require or authorise any function, duty or power to be carried out, performed or exercised in relation to the Isles of Scilly by the Agency; and references in the other provisions of this Act (apart from Part III) to England and Wales shall not include references to those Isles.

(2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order make provision with respect to the carrying out in those Isles of functions (other than functions under or by virtue of Part III or IV of this Act) falling to be carried out in relation to other parts of England and Wales by the Agency.

(3) Without prejudice to the generality of the power conferred by subsection (2) above, an order under this section may apply any provision of this Act (other than a provision contained in Part III or IV) in relation to the Isles of Scilly with or without modifications.

(4) An order under this section may—

- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.

(5) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument; and a statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 February 1996: see SI 1996/186, art 2.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

Environment Act 1995 (Isles of Scilly) Order 1996, SI 1996/1030 (made under sub-ss (2), (3)).
Environmental Protection Act 1990 (Isles of Scilly) Order 2006, SI 2006/1381 (made under sub-ss (2), (3)).

118 Application of certain other enactments to the Isles of Scilly

(1)–(6) < . . . >

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Sub-ss (1)–(3), (6): Appointment: 1 February 1996: see SI 1996/186, art 2.

Sub-ss (4), (5): Appointment (for the purpose of making orders): 1 February 1996: see SI 1996/186, art 2.

Amendment

This section inserts the Control of Pollution (Amendment) Act 1989, s 10A, substitutes the Environmental Protection Act 1990, s 76, the Water Industry Act 1991, s 222, the Water Resources Act 1991 s 224, and the Land Drainage Act 1991, s 75.

Repealed in part by the Statute Law (Repeals) Act 2004, Sch 1, Pt 13.

Date in force: 22 July 2004: (no specific commencement provision).

Miscellaneous and supplemental

119 Stamp duty

(1) No transfer effected by Part I of this Act shall give rise to any liability to stamp duty.

(2) Stamp duty shall not be chargeable—

(a) on any transfer scheme; or

(b) on any instrument or agreement which is certified to the Commissioners of Inland Revenue by the Secretary of State as made in pursuance of a transfer scheme.

(3) No transfer scheme, and no instrument which is certified as mentioned in subsection (2)(b) above, shall be taken to be duly stamped unless—

(a) it has, in accordance with section 12 of the Stamp Act 1891, been stamped with a particular stamp denoting that it is not chargeable with that duty or that it is duly stamped; or

(b) it is stamped with the duty to which it would be liable, apart from this section.

(4) In this section “transfer scheme” means a scheme made or approved by the Secretary of State under section 3 or 22 above for the transfer of property, rights or liabilities to the Agency or to SEPA.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 February 1996: see SI 1996/186, art 2.

120 Minor and consequential amendments, transitional and transitory provisions, savings and

repeals

(1) The enactments mentioned in Schedule 22 to this Act shall have effect with the amendments there specified (being minor amendments and amendments consequential on provisions of this Act); and, without prejudice to any power conferred by any other provision of this Act, the Secretary of State and the Minister shall each have power by regulations to make such additional consequential amendments—

- (a) of public general enactments passed before, or in the same Session as, this Act, and
- (b) of subordinate legislation made before the passing of this Act,

as he considers necessary or expedient by reason of the coming into force of any provision of this Act.

(2) The transitional provisions, transitory provisions and savings contained in Schedule 23 to this Act shall have effect; but those provisions are without prejudice to sections 16 and 17 of the Interpretation Act 1978 (effect of repeals).

(3) The enactments mentioned in Schedule 24 to this Act (which include some that are spent or no longer of practical utility) are hereby repealed to the extent specified in the third column of that Schedule.

(4) The power to make regulations under subsection (1) above shall be exercisable by statutory instrument; and a statutory instrument containing any such regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) The power to make regulations under subsection (1) above includes power to make such incidental, supplemental, consequential and transitional provision as the Secretary of State or the Minister thinks necessary or expedient.

(6) In this section—

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Sub-s (1): Appointment (for certain purposes): 28 July 1995: see SI 1995/1983, art 2.

Sub-s (3): Appointment (in relation to England and Wales for certain purposes): 15 May 2006: see SI 2006/934, art 2(b).

Sub-ss (1), (3): Appointment (for certain purposes): 21 September 1995: see SI 1995/1983, art 3.

Sub-s (1): Appointment (for certain purposes): 12 October 1995: see SI 1995/2649, art 2(j).

Sub-ss (1), (3): Appointment (for certain purposes): 1 February 1996: see SI 1996/186, art 2.

Sub-ss (1)–(3): Appointment (for certain purposes): 1 April 1996: see SI 1996/186, art 3; for savings see art 4 thereof.

Sub-s (1): Appointment (for certain purposes): 21 November 1996: see SI 1996/2909, art 2; for savings see art 4 thereof.

Sub-ss (1), (3): Appointment (for certain purposes): 31 December 1996: see SI 1996/2909, art 3; for savings see art 4 thereof.

Sub-s (1): Appointment (for certain purposes): 23 December 1997: see SI 1997/3044, art 2.

Sub-s (1): Appointment (for certain purposes): 1 April 1998: see SI 1998/604, art 2.

Sub-s (1): Appointment (for certain purposes): 16 March 1999: see SI 1999/803, art 2.

Sub-s (1): Appointment (for certain purposes): 1 April 1999: see SI 1999/803, art 3.

Sub-s (1): Appointment (for certain purposes): 29 April 1999: see SI 1999/1301, art 2.

Sub-s (1): Appointment (in relation to England for certain purposes): 1 April 2000: see SI 2000/340, art 2(b).

Sub-s (1): Appointment (in relation to Scotland for certain purposes): 14 July 2000: see SSI 2000/180, art 2(1)(b).

Sub-s (1): Appointment (in relation to Scotland for certain purposes): 1 January 2001: see SSI 2000/433, art 2.

Sub-s (1): Appointment (in relation to Wales for certain purposes): 15 September 2001: see SI 2001/3211, art 2(b).

Sub-s (1): Appointment (in relation to Scotland for certain purposes): 1 April 2003: see SSI 2003/206, art 2.

Sub-s (1): Appointment (in relation to Scotland for certain purposes): 1 January 2005: see SSI 2004/541, art 2(a).

Sub-s (1): Appointment (in relation to England and Wales for certain purposes): 15 May 2006: see SI 2006/934, art 2(a).

Sub-ss (2), (3): Appointment (for certain purposes): 1 January 1999: see SI 1995/1983, art 4.

Sub-s (3): Appointment (for certain purposes): 1 November 1995: see SI 1995/2765, art 2.

Sub-s (3): Appointment (in relation to Scotland for certain purposes): 1 January 1997: see SI 1996/2857, art 2.

Sub-s (3): Appointment (for certain purposes): 1 April 1997: see SI 1996/2560, art 2.

Sub-s (3): Appointment (in relation to England for certain purposes): 1 April 2000: see SI 2000/340, art 2(c).

Sub-s (3): Appointment (in relation to Scotland for certain purposes): 14 July 2000: see SSI 2000/180, art 2(1)(c).

Sub-s (3): Appointment (in relation to Wales for certain purposes): 15 September 2001: see SI 2001/3211, art 2(c).

Sub-s (3): Appointment (in relation to Scotland for certain purposes): 1 January 2005: see SSI 2004/541, art 2(b).

Sub-ss (4)–(6): Appointment: 28 July 1995: see SI 1995/1983, art 2.

Transfer of Functions

Functions of the Secretary of State and the Minister, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

Local Authorities (Members' Allowances) (Amendment) Regulations 1996, SI 1996/469 (made under sub-s (1)).

Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593 (made under sub-ss (1), (5)).

Environment Act 1995 (Consequential Amendment) Regulations 1999, SI 1999/1108 (made under sub-s (1)).

121 Local statutory provisions: consequential amendments etc

- (1) If it appears to the Secretary of State or the Minister to be appropriate to do so—
 - (a) for the purposes of, or in consequence of, the coming into force of any enactment contained in this Act; or
 - (b) in consequence of the effect or operation at any time after the transfer date of any such enactment or of anything done under any such enactment,

he may by order repeal, amend or re-enact (with or without modifications) any local statutory provision, including, in the case of an order by virtue of paragraph (b) above, a provision amended by virtue of paragraph (a) above.

- (2) An order made by the Secretary of State or the Minister under subsection (1) above may—

- (a) make provision applying generally in relation to local statutory provisions of a description specified in the order;
- (b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities;
- (c) contain such supplemental, consequential and transitional provision as the Secretary of State or, as the case may be, the Minister considers appropriate; and
- (d) in the case of an order made after the transfer date, require provision contained in the order to be treated as if it came into force on that date.

(3) The power under this section to repeal or amend a local statutory provision shall include power to modify the effect in relation to any local statutory provision of any provision of Schedule 23 to this Act.

(4) Nothing in any order under this section may abrogate or curtail the effect of so much of any local statutory provision as confers any right of way or confers on or preserves for the public—

- (a) any right of enjoyment of air, exercise or recreation on land; or
- (b) any right of access to land for the purposes of exercise or recreation.

(5) The power to make an order under subsection (1) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(6) The power to make an order under subsection (1) above shall be without prejudice to any power conferred by any other provision of this Act.

(7) In this section—

“local statutory provision” means—

- (a) a provision of a local Act (including an Act confirming a provisional order);
- (b) a provision of so much of any public general Act as has effect with respect to a particular area, with respect to particular persons or works or with respect to particular provisions falling within any paragraph of this definition;
- (c) a provision of an instrument made under any provision falling within paragraph (a) or (b) above; or
- (d) a provision of any other instrument which is in the nature of a local enactment;

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“the transfer date” has the same meaning as in Part I of this Act.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Transfer of Functions

Functions of the Secretary of State and the Minister, so far as exercisable in relation to Wales,

transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

122 Directions

- (1) Any direction given under this Act shall be in writing.
- (2) Any power conferred by this Act to give a direction shall include power to vary or revoke the direction.
- (3) Subsections (4) and (5) below apply to any direction given—
- (a) to the Agency or SEPA under any provision of this Act or any other enactment, or
 - (b) to any other body or person under any provision of this Act,
- being a direction to any extent so given for the purpose of implementing any obligations of the United Kingdom under the [EU] Treaties.
- (4) A direction to which this subsection applies shall not be varied or revoked unless, notwithstanding the variation or revocation, the obligations mentioned in subsection (3) above, as they have effect for the time being, continue to be implemented, whether by directions or any other instrument or by any enactment.
- (5) Any variation or revocation of a direction to which this subsection applies shall be published in such manner as the Minister giving it considers appropriate for the purpose of bringing the matters to which it relates to the attention of persons likely to be affected by them; and—
- (a) copies of the variation or revocation shall be made available to the public; and
 - (b) notice of the variation or revocation, and of where a copy of the variation or revocation may be obtained, shall be given—
 - (i) if the direction has effect in England and Wales, in the London Gazette;
 - (ii) if the direction has effect in Scotland, in the Edinburgh Gazette.
- [(6) In this section, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

- Sub-s (3): reference to “EU” in square brackets substituted by SI 2011/1043, art 6(1)(a).
Date in force: 22 April 2011: see SI 2011/1043, art 2; for transitional savings see art 3(3) thereof.
- Sub-s (6): inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 6, para 43(1), (12).
Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Transfer of Functions

Functions of the Minister, so far as exercisable in relation to Wales, transferred to the National

Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

123 Service of documents

(1) Without prejudice to paragraph 17(2)(d) of Schedule 7 to this Act, any notice required or authorised by or under this Act to be served (whether the expression “serve” or the expression “give” or “send” or any other expression is used) on any person may be served by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.

(2) Any such notice may—

- (a) in the case of a body corporate, be served on the secretary or clerk of that body;
- (b) in the case of a partnership, be served on a partner or a person having the control or management of the partnership business.

(3) For the purposes of this section and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person on whom any such notice is to be served shall be his last known address, except that—

- (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body;
- (b) in the case of a partnership or person having the control or the management of the partnership business, it shall be the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom shall be their principal office within the United Kingdom.

(4) If the person to be served with any such notice has specified an address in the United Kingdom other than his proper address within the meaning of subsection (3) above as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section and section 7 of the Interpretation Act 1978 as his proper address.

(5) Where under any provision of this Act any notice is required to be served on a person who is, or appears to be, in occupation of any premises then—

- (a) if the name or address of such a person cannot after reasonable inquiry be ascertained, or
- (b) if the premises appear to be or are unoccupied,

that notice may be served either by leaving it in the hands of a person who is or appears to be resident or employed on the premises or by leaving it conspicuously affixed to some building or object on the premises.

(6) This section shall not apply to any notice in relation to the service of which provision is made by rules of court.

(7) The preceding provisions of this section shall apply to the service of a document as they apply to the service of a notice.

(8) In this section—

“premises” includes any land, vehicle, vessel or mobile plant;

“serve” shall be construed in accordance with subsection (1) above.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

See Further

See further, in relation to the application of sub-ss (1)-(4) above, for the purposes of the Environment Agency (Inland Waterways) Order 2010: the Environment Agency (Inland Waterways) Order 2010, SI 2010/699, art 16(4).

124 General interpretation

(1) In this Act, except in so far as the context otherwise requires—

“the Agency” means the Environment Agency;

“financial year” means a period of twelve months ending with 31st March;

“functions” includes powers and duties;

“modifications” includes additions, alterations and omissions and cognate expressions shall be construed accordingly;

“notice” means notice in writing;

“records”, without prejudice to the generality of the expression, includes computer records and any other records kept otherwise than in a document;

“SEPA” means the Scottish Environment Protection Agency.

(2) The amendment by this Act of any provision contained in subordinate legislation shall not be taken to have prejudiced any power to make further subordinate legislation amending or revoking that provision.

(3) In subsection (2) above, “subordinate legislation” has the same meaning as in the Interpretation Act 1978.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

125 Short title, commencement, extent, etc

(1) This Act may be cited as the Environment Act 1995.

(2) Part III of this Act, except for section 78, paragraph 7(2) of Schedule 7 and Schedule 10, shall come into force at the end of the period of two months beginning with the day on which this Act is passed.

(3) Except as provided in subsection (2) above and except for this section, section 74 above and paragraphs 76(8)(a) and 135 of Schedule 22 to this Act (which come into force on the passing of this Act)

and the repeal of sub-paragraph (1) of paragraph 22 of Schedule 10 to this Act (which comes into force in accordance with sub-paragraph (7) of that paragraph) this Act shall come into force on such day as the Secretary of State may specify by order made by statutory instrument; and different days may be so specified for different provisions or for different purposes of the same provision.

(4) Without prejudice to the provisions of Schedule 23 to this Act, an order under subsection (3) above may make such transitional provisions and savings as appear to the Secretary of State necessary or expedient in connection with any provision brought into force by the order.

(5) The power conferred by subsection (4) above includes power to modify any enactment contained in this or any other Act.

(6) An Order in Council under paragraph 1(1)(b) of Schedule 1 to the Northern Ireland Act 1974 (legislation for Northern Ireland in the interim period) which states that it is made only for purposes corresponding to those of section 98 of this Act—

- (a) shall not be subject to paragraph 1(4) and (5) of that Schedule (affirmative resolution of both Houses of Parliament); but
- (b) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(7) Except for this section and any amendment or repeal by this Act of any provision contained in—

- (a) the Parliamentary Commissioner Act 1967,
- (b) the Sea Fish (Conservation) Act 1967,
- (c) the House of Commons Disqualification Act 1975, or
- (d) the Northern Ireland Assembly Disqualification Act 1975,

this Act shall not extend to Northern Ireland.

(8) Part III of this Act, and Schedule 24 to this Act so far as relating to that Part, extends to England and Wales only.

(9) Section 106 of, and Schedule 16 to, this Act extend to Scotland only.

(10) Subject to the foregoing provisions of this section and to any express provision made by this Act to the contrary, any amendment, repeal or revocation made by this Act shall have the same extent as the enactment or instrument to which it relates.

NOTES

Initial Commencement

Royal Assent

Royal Assent: 19 July 1995: see sub-s (3) above.

Modification

The Northern Ireland Act 1998 makes new provision for the government of Northern Ireland for the purpose of implementing the Belfast Agreement (the agreement reached at multi-party talks on Northern Ireland and set out in Command Paper 3883). As a consequence of that Act, any reference in this section to the Parliament of Northern Ireland or the Assembly established under the Northern Ireland Assembly Act 1973, s 1, certain office-holders and Ministers, and any legislative act and certain financial dealings thereof, shall, for the period specified, be construed in accordance with Sch 12, paras 1–11 to the 1998 Act.

Subordinate Legislation

UK

Environment Act 1995 (Commencement No 1) Order 1995, SI 1995/1983 (made under sub-s (3)).
Environment Act 1995 (Commencement No 2) Order 1995, SI 1995/2649 (made under sub-s (3)).
Environment Act 1995 (Commencement No 3) Order 1995, SI 1995/2765 (made under sub-s (3)).
Environment Act 1995 (Commencement No 4 and Saving Provisions) Order 1995, SI 1995/2950 (made under sub-ss (3), (4)).
Environment Act 1995 (Commencement No 5) Order 1996, SI 1996/186 (made under sub-ss (3)–(5)).
Environment Act (Commencement No 6 and Repeal Provisions) Order 1996, SI 1996/2560 (made under sub-ss (3), (4)).
Environment Act 1995 (Commencement No 7) (Scotland) Order 1996, SI 1996/2857 (made under sub-s (3)).
Environment Act 1995 (Commencement No 8 and Saving Provisions) Order 1996, SI 1996/2909 (made under sub-ss (3), (4)).
Environment Act 1995 (Commencement No 9 and Transitional Provisions) Order 1997, SI 1997/1626 (made under sub-ss (3), (4)).
Environment Act 1995 (Commencement No 10) Order 1997, SI 1997/3044 (made under sub-s (3)).
Environment Act 1995 (Commencement No 11) Order 1998, SI 1998/604 (made under sub-ss (3), (4)).
Environment Act 1995 (Commencement No 12 and Transitional Provisions) (Scotland) Order 1998, SI 1998/781 (made under sub-ss (3), (4)).
Environment Act 1995 (Commencement No 13) (Scotland) Order 1998, SI 1998/3272 (made under sub-s (3)).
Environment Act 1995 (Commencement No 14) Order 1999, SI 1999/803 (made under sub-ss (3), (4)).
Environment Act 1995 (Commencement No 15) Order 1999, SI 1999/1301 (made under sub-s (3)).
Environment Act 1995 (Commencement No 16 and Saving Provision) (England) Order 2000, SI 2000/340 (made under sub-ss (3), (4)).
Environment Act 1995 (Commencement No 18) (Scotland) Order 2000, SI 2000/1986 (made under sub-s 3)).
Environment Act 1995 (Commencement No 18) (England and Wales) Order 2000, SI 2000/3033 (made under sub-s (3)).
Environment Act 1995 (Commencement No 20 and Saving Provision) (Wales) Order 2001, SI 2001/3211 (made under sub-ss (3), (4)).
Environment Act 1995 (Commencement No 23) (England and Wales) Order 2006, SI 2006/934 (made under sub-s (3)).

Scotland

Environment Act 1995 (Commencement No 17 and Savings Provision) (Scotland) Order 2000, SSI 2000/180 (made under sub-ss (3), (4)) .
Environment Act 1995 (Commencement No 19) (Scotland) Order 2000, SSI 2000/433 (made under sub-s (3)).
Environment Act 1995 (Commencement No 21) (Scotland) Order 2003, SSI 2003/206 (made under sub-s (3)).
Environment Act 1995 (Commencement No 22) (Scotland) Order 2004, SSI 2004/541 (made under sub-s (3)).

SCHEDULE 1
THE ENVIRONMENT AGENCY

Section 1

Membership

1

(1) Subject to the following provisions of this paragraph, a member shall hold and vacate office in accordance with the terms of his appointment and shall, on ceasing to be a member, be eligible for re-

appointment.

- (2) A member may at any time resign his office by giving notice to the appropriate Minister.
- (3) The appropriate Minister may remove a member from that office if he is satisfied—
 - (a) that the member has been absent from meetings of the Agency for a period of more than three months without the permission of the Agency;
 - (b) that the member has been adjudged bankrupt, [that a debt relief order (under Part 7A of the Insolvency Act 1986) has been made in respect of him,] that his estate has been sequestrated or that he has made a composition or arrangement with, or granted a trust deed for, his creditors; or
 - (c) that the member is unable or unfit to carry out the functions of a member.

Chairman and deputy chairman

2

The chairman or deputy chairman of the Agency shall hold office as such unless and until—

- (a) he resigns that office by giving notice to the Secretary of State, or
- (b) he ceases to be a member,

and shall, on ceasing to be the chairman or deputy chairman, be eligible for further designation as such in accordance with section 1(3) of this Act at any time when he is a member.

Remuneration, pensions, etc

3

- (1) The Agency shall pay to its members such remuneration, and such travelling and other allowances, as may be determined by the appropriate Minister.
- (2) The Agency shall, if so required by the appropriate Minister,—
 - (a) pay such pension, allowances or gratuities as may be determined by that Minister to or in respect of a person who is or has been a member;
 - (b) make such payments as may be determined by that Minister towards provision for the payment of a pension, allowances or gratuities to or in respect of a person who is or has been a member; or
 - (c) provide and maintain such schemes (whether contributory or not) as may be determined by that Minister for the payment of pensions, allowances or gratuities to or in respect of persons who are or have been members.
- (3) If, when any member ceases to hold office, the appropriate Minister determines that there are special circumstances which make it right that that member should receive compensation, the Agency shall pay to him a sum by way of compensation of such amount as may be so determined.

Staff

4

- (1) The Agency may appoint such officers and employees as it may determine.
- (2) No member or other person shall be appointed by the Agency to act as chief executive of the Agency unless the Secretary of State has consented to the appointment of that person.
- (3) The Agency may—
 - (a) pay such pensions, allowances or gratuities to or in respect of any persons who are or have been its officers or employees as it may, with the approval of the Secretary of State, determine;
 - (b) make such payments as it may so determine towards provision for the payment of pensions, allowances or gratuities to or in respect of any such persons;
 - (c) provide and maintain such schemes as it may so determine (whether contributory or not) for the payment of pensions, allowances or gratuities to or in respect of any such persons.
- (4) Any reference in sub-paragraph (3) above to pensions, allowances or gratuities to or in respect of any such persons as are mentioned in that sub-paragraph includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the Agency's officers or employees who suffer loss of office or employment or loss or diminution of emoluments.

Proceedings of the Agency

5

Subject to the following provisions of this Schedule and to section 106 of the 1991 Act (obligation to carry out flood defence functions through committees), the Agency may regulate its own procedure (including quorum).

Delegation of powers

6

Subject to section 106 of the 1991 Act, anything authorised or required by or under any enactment to be done by the Agency may be done—

- (a) by any member, officer or employee of the Agency who has been authorised for the purpose, whether generally or specially, by the Agency; or
- (b) by any committee or sub-committee of the Agency which has been so authorised.

Members' interests

7

(1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of the Agency shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—

- (a) the disclosure shall be recorded in the minutes of the meeting; and
- (b) the member shall not take any part in any deliberation or decision of the Agency, or of any of its committees or sub-committees, with respect to that matter.

(2) For the purposes of sub-paragraph (1) above, a general notification given at a meeting of the Agency by a member to the effect that he—

- (a) is a member of a specified company or firm, and
- (b) is to be regarded as interested in any matter involving that company or firm,

shall be regarded as a sufficient disclosure of his interest in relation to any such matter.

(3) A member need not attend in person at a meeting of the Agency in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is read and considered at the meeting.

(4) The Secretary of State may, subject to such conditions as he considers appropriate, remove any disability imposed by virtue of this paragraph in any case where the number of members of the Agency disabled by virtue of this paragraph at any one time would be so great a proportion of the whole as to impede the transaction of business.

(5) The power of the Secretary of State under sub-paragraph (4) above includes power to remove, either indefinitely or for any period, a disability which would otherwise attach to any member, or members of any description, by reason of such interests, and in respect of such matters, as may be specified or described by the Secretary of State.

(6) Nothing in this paragraph precludes any member from taking part in the consideration or discussion of, or voting on, any question whether an application should be made to the Secretary of State for the exercise of the power conferred by sub-paragraph (4) above.

(7) Any reference in this paragraph to a meeting of the Agency includes a reference to a meeting of any committee or sub-committee of the Agency.

Vacancies and defective appointments

8

The validity of any proceedings of the Agency shall not be affected by a vacancy amongst the members or by a defect in the appointment of a member.

Minutes

9

(1) Minutes shall be kept of proceedings of the Agency, of its committees and of its sub-committees.

(2) Minutes of any such proceedings shall be evidence of those proceedings if they are signed by a person purporting to have acted as chairman of the proceedings to which the minutes relate or of any subsequent proceedings in the course of which the minutes were approved as a correct record.

(3) Where minutes of any such proceedings have been signed as mentioned in sub-paragraph (2) above, those proceedings shall, unless the contrary is shown, be deemed to have been validly convened and constituted.

Application of seal and proof of instruments

10

(1) The application of the seal of the Agency shall be authenticated by the signature of any member, officer or employee of the Agency who has been authorised for the purpose, whether generally or specially, by the Agency.

(2) In this paragraph the reference to the signature of a person includes a reference to a facsimile of a signature by whatever process reproduced; and, in paragraph 11 below, the word “signed” shall be construed accordingly.

Documents served etc by or on the Agency

11

(1) Any document which the Agency is authorised or required by or under any enactment to serve, make or issue may be signed on behalf of the agency by any member, officer or employee of the Agency who has been authorised for the purpose, whether generally or specially, by the Agency.

(2) Every document purporting to be an instrument made or issued by or on behalf of the Agency and to be duly executed under the seal of the Agency, or to be signed or executed by a person authorised by the Agency for the purpose, shall be received in evidence and be treated, without further proof, as being so made or issued unless the contrary is shown.

(3) Any notice which is required or authorised, by or under any provision of any other Act, to be given, served or issued by, to or on the Agency shall be in writing.

Interpretation

12

In this Schedule—

“the appropriate Minister”, in relation to any person who is or has been a member, means the Minister or the Secretary of State, according to whether that person was appointed as a member by the Minister or by the Secretary of State; and

“member”, except where the context otherwise requires, means any member of the Agency (including the chairman and deputy chairman).

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 28 July 1995: see SI 1995/1983, art 2.

Amendment

Para 1: in sub-para (3)(b) words from “that a debt” to “respect of him,” in square brackets inserted by SI 2012/2404, art 3(2), Sch 2, para 33(1), (2).

Date in force: 1 October 2012: see SI 2012/2404, art 1; for transitional provisions see art 5 thereof.

Transfer of Functions

See further in relation to the transfer of functions under this Schedule to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Functions under this Schedule, so far as exercisable by the Welsh Ministers, are transferred to the Secretary of State by the Natural Resources Body for Wales (Consequential Provision) Order 2013, SI 2013/1821, art 5.

SCHEDULE 2
TRANSFERS OF PROPERTY ETC: SUPPLEMENTAL PROVISIONS

Part I
Introductory

Interpretation

1

In this Schedule—

“the chief inspector”—

(a) in the application of this Schedule in relation to transfers by or under section 3 of this Act, means any of the inspectors or chief inspectors mentioned in section 2(1) of this Act;

(b) in the application of this Schedule in relation to transfers by or under section 22 of this Act, means any of the inspectors or chief inspectors mentioned in section 21(1) of this Act;

and any reference to the chief inspector for England and Wales or the chief inspector for Scotland shall be construed accordingly;

“the relevant new Agency” means—

(a) in the application of this Schedule in relation to transfers by or under section 3 of this Act, the Agency; and

(b) in the application of this Schedule in relation to transfers by or under section 22 of this Act, SEPA;

“transfer scheme” means a scheme under section 3 or 22 of this Act;

“the transferor”, in relation to transfers by or under section 3 of this Act, means—

(a) in the case of any transfer by section 3(1)(a) of this Act, the National Rivers Authority or the London Waste Regulation Authority, as the case may be; or

(b) in the case of any transfer scheme, or any transfer by transfer scheme—

(i) the Secretary of State,

(ii) the chief inspector, or

(iii) any waste regulation authority,

(as the case may be) from whom any property, rights or liabilities are, or are to be, transferred by that scheme;

“the transferor”, in relation to transfers by or under section 22 of this Act, means—

(a) in the case of any transfer by section 22(1)(a) of this Act, the river purification board in question; or

(b) in the case of any transfer scheme, or any transfer by transfer scheme—

(i) the Secretary of State;

- (ii) the chief inspector; or
- (iii) any local authority,

(as the case may be) from whom any property, rights or liabilities are, or are to be, transferred by that scheme; and, as respects any such local authority which is a district or islands council, includes, in relation to any time on or after 1st April 1996, the council for any local government area named in column I of Schedule 1 to the Local Government etc (Scotland) Act 1994 which is wholly or partly conterminous with the area of that council.

The property etc which may be transferred

2

(1) The property, rights and liabilities which are transferred by, or may be transferred by transfer scheme under, section 3 or 22 of this Act include—

- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned by the transferor;
- (b) in the case of a transfer scheme, such property, rights and liabilities to which the transferor may become entitled or subject after the making of the scheme and before the transfer date as may be specified in the scheme;
- (c) property situated anywhere in the United Kingdom or elsewhere;
- (d) rights and liabilities under enactments;
- (e) rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.

(2) The transfers authorised by paragraph (a) of sub-paragraph (1) above include transfers which, by virtue of that paragraph, are to take effect as if there were no such contravention, liability or interference with any interest or right as there would be, in the case of a transfer or assignment otherwise than by or under section 3 or 22 of this Act, by reason of any provision having effect (whether under any enactment or agreement or otherwise) in relation to the terms on which the transferor is entitled or subject to the property, right or liability in question.

(3) This paragraph is subject to paragraph 3 below.

Contracts of Employment

3

(1) The rights and liabilities that may be transferred by and in accordance with a transfer scheme include (subject to the following provisions of this paragraph) any rights or liabilities of the employer under the contract of employment of any person—

- (a) who is employed—
 - (i) in the civil service of the State;
 - (ii) by a body which is a waste regulation authority in England or Wales; or
 - (iii) by a local authority in Scotland;
- (b) who appears to the appropriate authority to be employed for the purposes of, or otherwise in

connection with, functions which are by virtue of this Act to become functions of a new Agency; and

- (c) whom the appropriate authority considers it necessary or expedient to transfer into the employment of that new Agency;

and in the following provisions of this paragraph any reference to a “qualifying employee” is a reference to such a person.

(2) A transfer scheme which provides for the transfer of rights or liabilities under the contracts of employment of qualifying employees must identify those employees—

- (a) by specifying them;
- (b) by referring to persons of a description specified in the scheme (with or without exceptions); or
- (c) partly in the one way and partly in the other.

(3) A transfer scheme shall not operate to transfer rights or liabilities under so much of a contract of employment as relates to an occupational pension scheme, other than any provisions of such a pension scheme which do not relate to benefits for old age, invalidity or survivors.

(4) Where a transfer scheme provides for the transfer of rights or liabilities under the contract of employment of a qualifying employee—

- (a) all the employer’s rights, powers, duties and liabilities under or in connection with the contract of employment shall be transferred to the relevant new Agency on the transfer date by and in accordance with the scheme, and
- (b) anything done by or in relation to the employer in respect of the qualifying employee before the transfer date shall be treated on and after that date as done by or in relation to the relevant new Agency,

except in a case where objection is made by the qualifying employee as mentioned in sub-paragraph (8)(b) below.

(5) Sub-paragraphs (6) and (7) below shall have effect in any case where rights or liabilities under the contract of employment of a qualifying employee are transferred by and in accordance with a transfer scheme.

(6) In a case falling within sub-paragraph (5) above—

- (a) the transfer shall be regarded for the purposes of [section 138 of the Employment Rights Act 1996] (renewal of contract or re-engagement) as a renewal of the qualifying employee’s contract of employment, or a re-engagement of the qualifying employee, falling within subsection (1) of that section; and
- (b) the qualifying employee shall accordingly not be regarded as having been dismissed by virtue of the transfer.

(7) In a case falling within sub-paragraph (5) above, for the purposes of [Chapter I of Part XIV of the Employment Rights Act 1996] (ascertainment of the length of an employee’s period of employment and whether that employment is continuous)—

- (a) so much of the qualifying employee’s period of continuous employment as ends with the day preceding the transfer date shall be treated on and after that date as a period of employment

- with the relevant new Agency; and
- (b) the continuity of the period of employment of the qualifying employee shall be treated as not having been broken by the transfer.
- (8) Sub-paragraph (9) below shall have effect in any case where—
- (a) a transfer scheme contains provision for the transfer of rights or liabilities under the contract of employment of a qualifying employee, but
- (b) the qualifying employee informs the appropriate authority or the relevant new Agency that he objects to becoming employed by that new Agency.
- (9) In a case falling within sub-paragraph (8) above—
- (a) the transfer scheme—
- (i) shall not operate to transfer any rights, powers, duties or liabilities under or in connection with the contract of employment; but
- (ii) shall operate so as to terminate that contract on the day preceding the transfer date; and
- (b) the qualifying employee shall not, by virtue of that termination, be treated for any purpose as having been dismissed.
- (10) In this paragraph—
- “the appropriate authority” means—
- (a) in the case of a person employed in the civil service of the State, the Secretary of State;
- (b) in the case of a transfer scheme under section 3 of this Act and a person employed by a body which is a waste regulation authority, that body;
- (c) in the case of a transfer scheme under section 22 of this Act and a person employed by a local authority, that authority;
- “occupational pension scheme” has the meaning given by section 1 of the Pension Schemes Act 1993.
- (11) This paragraph shall apply in relation to any qualifying employee as if, as respects any time before the transfer date,—
- (a) any reference to a person’s contract of employment included a reference to his employment in the civil service of the State or to the terms of that employment, as the case may require; and
- (b) any reference to the dismissal of a person included a reference to the termination of his employment in that service.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment (for certain purposes): 28 July 1995: see SI 1995/1983, art 2.

Appointment (for remaining purposes): 12 October 1995: see SI 1995/2649, art 2(c).

Amendment

Para 3: in sub-paras (6), (7) words in square brackets substituted by the Employment Rights Act 1996, s 240, Sch 1, para 68.

Part II
Transfer Schemes

Description of the property etc to be transferred by scheme

4

A transfer scheme may define the property, rights and liabilities to be transferred by the scheme—

- (a) by specifying or describing the property, rights and liabilities in question;
- (b) by referring to all (or all but so much as may be excepted) of the property, rights and liabilities comprised in a specified part of the undertaking of the transferor; or
- (c) partly in the one way and partly in the other.

Division of property etc to be transferred by scheme: creation of new rights and interests

5

(1) For the purpose of making any division of property, rights or liabilities which it is considered appropriate to make in connection with the transfer of property, rights and liabilities by and in accordance with a transfer scheme, any such scheme may—

- (a) create in favour of the transferor an interest in, or right over, any property transferred by the scheme;
- (b) create in favour of the relevant new Agency an interest in, or right over, any property retained by the transferor;
- (c) create new rights and liabilities as between the relevant new Agency and the transferor; or
- (d) in connection with any provision made by virtue of paragraph (a), (b) or (c) above, make incidental provision as to the interests, rights and liabilities of persons other than the transferor and the relevant new Agency with respect to the subject-matter of the transfer scheme;

and references in the other provisions of Part I of this Act to the transfer of property, rights or liabilities (so far as relating to transfers by and in accordance with transfer schemes) shall accordingly be construed as including references to the creation of any interest, right or liability by virtue of paragraph (a), (b) or (c) above or the making of provision by virtue of paragraph (d) above.

(2) The provision that may be made by virtue of paragraph (c) of sub-paragraph (1) above includes—

- (a) provision for treating any person who is entitled by virtue of a transfer scheme to possession of a document as having given another person an acknowledgement in writing of the right of that other person to the production of the document and to delivery of copies of it; and
- (b) in the case of a transfer scheme under section 3 of this Act, provision applying section 64 of the Law of Property Act 1925 (production and safe custody of documents) in relation to any case in relation to which provision falling within paragraph (a) above has effect.

Transfer schemes: incidental, supplemental and consequential provision

6

- (1) A transfer scheme may make such incidental, supplemental and consequential provision—
 - (a) as the Secretary of State considers appropriate, in the case of a scheme made by him,
 - (b) as a body which is a waste regulation authority considers appropriate, in the case of a scheme made by that body under section 3 of this Act, or
 - (c) as a local authority considers appropriate, in the case of a scheme made by that authority under section 22 of this Act.
- (2) Without prejudice to the generality of sub-paragraph (1) above, a transfer scheme may provide—
 - (a) that disputes as to the effect of the scheme between the transferor and the relevant new Agency are to be referred to such arbitration as may be specified in or determined under the transfer scheme;
 - (b) that determinations on such arbitrations and certificates given jointly by the transferor and the relevant new Agency as to the effect of the scheme as between them are to be conclusive for all purposes.

Modification of transfer schemes

7

- (1) If at any time after a transfer scheme has come into force the Secretary of State considers it appropriate to do so, he may by order provide that the scheme shall for all purposes be deemed to have come into force with such modifications as may be specified in the order.
- (2) An order under sub-paragraph (1) above—
 - (a) may make, with effect from the coming into force of the transfer scheme in question, such provision as could have been made by the scheme; and
 - (b) in connection with giving effect to that provision from that time, may contain such supplemental, consequential or transitional provision as the Secretary of State considers appropriate.
- (3) The Secretary of State shall not make an order under sub-paragraph (1) above except after consultation with—
 - (a) the relevant new Agency; and
 - (b) if the transfer scheme in question is—
 - (i) a scheme under section 3 of this Act which transferred property, rights or liabilities of a waste regulation authority, or
 - (ii) a scheme under section 22 of this Act which transferred property, rights or liabilities of a local authority,the body which was the transferor in the case of that scheme.
- (4) The power to make an order under sub-paragraph (1) above shall be exercisable by statutory instrument; and a statutory instrument containing any such order shall be subject to annulment in

pursuance of a resolution of either House of Parliament.

Provision of information and assistance to the Secretary of State and the new Agencies in connection with transfer schemes

8

(1) It shall be the duty of each of the following, that is to say—

- (a) the chief inspector for England and Wales,
- (b) any body which is a waste regulation authority in England or Wales, and
- (c) any officer of such a body,

to provide the Secretary of State or the Agency with such information or assistance as the Secretary of State or, as the case may be, the Agency may reasonably require for the purposes of, or in connection with, the exercise of any powers of the Secretary of State or the Agency in relation to transfer schemes.

(2) It shall be the duty of each of the following, that is to say—

- (a) the chief inspector for Scotland,
- (b) any local authority, and
- (c) any officer of a local authority,

to provide the Secretary of State or SEPA with such information or assistance as the Secretary of State or, as the case may be, SEPA may reasonably require for the purposes of, or in connection with, the exercise of any powers of the Secretary of State or SEPA in relation to transfer schemes.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment (for certain purposes): 28 July 1995: see SI 1995/1983, art 2.

Appointment (for remaining purposes): 12 October 1995: see SI 1995/2649, art 2(c).

Part III

General Provisions with Respect to Transfers by or under Section 3 or 22

Consideration

9

No consideration shall be provided in respect of the transfer of any property, rights or liabilities by or under section 3 or 22 of this Act; but—

- (a) a transfer scheme may contain provision for consideration to be provided by the relevant new Agency in respect of the creation of interests, rights or liabilities by means of the transfer scheme; and
- (b) any such provision shall be enforceable in the same way as if the interests, rights or liabilities had been created, and (if the case so requires) had been capable of being created, by agreement between the parties.

Continuity

10

- (1) This paragraph applies in relation to—
- (a) any transfer of property, rights or liabilities by section 3 or 22 of this Act; or
 - (b) subject to any provision to the contrary in the transfer scheme in question, any transfer of property, rights or liabilities by a transfer scheme.
- (2) Where this paragraph applies in relation to a transfer, then, so far as may be necessary for the purposes of, or in connection with, the transfer—
- (a) any agreements made, transactions effected or other things done by or in relation to the transferor shall be treated as made, effected or done by or in relation to the relevant new Agency;
 - (b) references (whether express or implied and, if express, however worded) to the transferor in any agreement (whether in writing or not) or in any deed, bond, instrument or other document relating to the property, rights or liabilities transferred shall, as respects anything falling to be done on or after the transfer date, have effect as references to the relevant new Agency.

Remedies

11

- (1) Without prejudice to the generality of paragraph 10 above, a new Agency and any other person shall, as from the transfer date, have the same rights, powers and remedies (and, in particular, the same rights and powers as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority) for ascertaining, perfecting or enforcing any right or liability transferred to that new Agency by or under this Act as that new Agency or that person would have had if that right or liability had at all times been a right or liability of that new Agency.
- (2) Without prejudice to the generality of paragraph 10 above, any legal proceedings or applications to any authority pending immediately before the transfer date by or against a transferor, in so far as they relate to any property, right or liability transferred to the relevant new Agency by or under this Act or to any agreement relating to any such property, right or liability, shall be continued by or against the relevant new Agency to the exclusion of the transferor.

Perfection of vesting of foreign property, rights and liabilities

12

- (1) This paragraph applies in the case of any transfer by or under section 3 or 22 of this Act of any foreign property, rights or liabilities.
- (2) It shall be the duty of the transferor and the relevant new Agency to take, as and when that new Agency considers it appropriate, all such steps as may be requisite to secure that the vesting in that new Agency by, or by transfer scheme under, section 3 or 22 of this Act of any foreign property, right or liability is effective under the relevant foreign law.
- (3) Until the vesting in the relevant new Agency by, or by transfer scheme under, section 3 or 22 of this Act of any foreign property, right or liability is effective under the relevant foreign law, it shall be the duty of the transferor to hold that property or right for the benefit of, or to discharge that liability on behalf of, the relevant new Agency.

(4) Nothing in sub-paragraphs (2) and (3) above shall be taken as prejudicing the effect under the law of any part of the United Kingdom of the vesting in the relevant new Agency by, or by transfer scheme under, section 3 or 22 of this Act of any foreign property, right or liability.

(5) The transferor shall have all such powers as may be requisite for the performance of his duty under this paragraph, but it shall be the duty of the relevant new Agency to act on behalf of the transferor (so far as possible) in performing the duty imposed on the transferor by this paragraph.

(6) References in this paragraph to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have been determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.

(7) Duties imposed on the transferor or the relevant new Agency by this paragraph shall be enforceable in the same way as if the duties were imposed by a contract between the transferor and that new Agency.

(8) Any expenses reasonably incurred by the transferor under this paragraph shall be met by the relevant new Agency.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment (for certain purposes): 28 July 1995: see SI 1995/1983, art 2.

Appointment (for remaining purposes): 12 October 1995: see SI 1995/2649, art 2(c).

SCHEDULE 3

...

NOTES

Amendment

Repealed by SI 2013/755, art 9(1)(a), (2)(c).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

...

NOTES

Amendment

Repealed by SI 2013/755, art 9(1)(a), (2)(c).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

...

NOTES

Amendment

Repealed by SI 2013/755, art 9(1)(a), (2)(c).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

SCHEDULE 4

BOUNDARIES OF REGIONAL FLOOD DEFENCE AREAS

NOTES

Amendment

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i).

Section 14

NOTES

Amendment

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i).

Power to make order

1

(1) *The relevant Minister may by order made by statutory instrument—*

- (a) *alter the boundaries of the area of any regional flood defence committee; or*
- (b) *provide for the amalgamation of any two or more such areas;*
- [(c) *establish a new regional flood defence committee for such area as may be specified in the order (other than by providing for the amalgamation of the area of any two or more such committees); or*
- (d) *abolish a regional flood defence committee*].

(2) *Where an order under this Schedule makes provision by reference to anything shown on a main river map, that map shall be conclusive evidence for the purposes of the order of what is shown on the map.*

(3) *The power to make an order under this Schedule shall include power to make such supplemental, consequential and transitional provision as the relevant Minister considers appropriate.*

(4) *In the case of an order under this Schedule amalgamating the areas of any two or more regional flood defence committees [or otherwise establishing a new regional flood defence committee], the provision made by virtue of sub-paragraph (3) above may include provision determining—*

- (a) *the total number of members of the amalgamated [or new] committee; and*
- (b) *the total number of such members to be appointed by the constituent councils of that committee;*

and subsections (7) and (8) of section 16 of this Act shall apply in relation to so much of an order under this Schedule as is made by virtue of this sub-paragraph as they apply in relation to an order under subsection (5) of that section.

(5) *In this paragraph and the following paragraphs of this Schedule “the relevant Minister”—*

- (a) *in relation to any alteration of the boundaries of an area where the whole or any part of that area is in Wales, means the Ministers;*

(b) *in relation to the amalgamation of any two or more areas where the whole or any part of any one of those areas is in Wales, means the Ministers; and*

[(ba) *in relation to the establishment or abolition of a regional flood defence committee for an area the whole of which is in Wales, the National Assembly for Wales;*

(bb) *in relation to the establishment or abolition of a regional flood defence committee for an area any part (but not the whole) of which is in Wales, the Secretary of State and the National Assembly for Wales acting jointly; and]*

(c) *in any other case, means the Minister.*

(6) *In this paragraph—*

“main river” means a main river within the meaning of Part IV of the 1991 Act; and

“main river map” has, subject to section 194 of the 1991 Act, the meaning given by section 193(2) of that Act.

Consultation and notice of intention to make order

2

(1) *Before making an order under this Schedule, the relevant Minister shall—*

(a) *consult such persons or representative bodies as he considers it appropriate to consult at that stage;*

(b) *prepare a draft order;*

(c) *publish a notice complying with sub-paragraph (2) below in the London Gazette and in such other manner as he considers appropriate for bringing the draft order to the attention of persons likely to be affected by it if it is made.*

(2) *A notice for the purposes of sub-paragraph (1)(c) above with respect to a draft order shall—*

(a) *state the relevant Minister’s intention to make the order and its general effect;*

(b) *specify the places where copies of the draft order and of any map to which it refers may be inspected by any person free of charge at all reasonable times during the period of twenty-eight days beginning with the date on which the notice is first published otherwise than in the London Gazette; and*

(c) *state that any person may within that period by notice in writing to the relevant Minister object to the making of the order.*

(3) *The relevant Minister shall also cause copies of the notice and of the draft order to be served on every person carrying out functions under any enactment who appears to him to be concerned.*

Objections to draft order and making of order

3

(1) *Before making an order under this Schedule, the relevant Minister—*

(a) *shall consider any representations or objections which are duly made with respect to the draft order and are not withdrawn; and*

(b) *may, if he thinks fit, cause a local inquiry to be held with respect to any such representations or objections.*

(2) *Where notice of a draft order has been published and given in accordance with paragraph 2 above and any representations or objections considered under sub-paragraph (1) above, the relevant Minister may make the order either in the terms of the draft or in those terms as modified in such manner as he thinks fit, or may decide not to make the order.*

(3) *The relevant Minister shall not make a modification of a draft order in so far as the modification is such as to include in the area of any regional flood defence committee any tidal waters which, if the order had been made in the form of the draft, would have been outside the area of every regional flood defence committee.*

Procedure for making of order

4

(1) *Where the relevant Minister makes an order under this Schedule, he shall serve notice of the making of the order on every person (if any) who—*

- (a) *is a person on whom notice is required to have been served under paragraph 2(3) above; and*
- (b) *has duly made an objection to the making of the order that has not been withdrawn.*

(2) *Where a notice is required to be served under sub-paragraph (1) above with respect to any order, the order shall not have effect before the end of a period of twenty-eight days from the date of service of the last notice served under that sub-paragraph.*

(3) *If before an order takes effect under sub-paragraph (2) above—*

- (a) *any person who has been served with a notice under sub-paragraph (1) above with respect to that order serves notice objecting to the order on the Minister (or, in the case of an order made jointly by the Ministers, on either of them), and*
- (b) *the objection is not withdrawn,*

the order shall be subject to special parliamentary procedure.

(4) *A statutory instrument containing an order under this Schedule which is not subject to special parliamentary procedure under sub-paragraph (3) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.*

Notice after making of order

5

(1) *Subject to sub-paragraph (2) below, after making an order under this Schedule, the relevant Minister shall publish in the London Gazette, and in such other manner as he considers appropriate for bringing the order to the attention of persons likely to be affected by it, a notice—*

- (a) *stating that the order has been made; and*
- (b) *naming the places where a copy of the order may be inspected at all reasonable times.*

(2) *In the case of an order to which sub-paragraph (2) of paragraph 4 above applies, the notice—*

- (a) *shall not be published until the end of the period of twenty-eight days referred to in that sub-*

paragraph; and

- (b) *shall state whether or not the order is to be subject to special parliamentary procedure.*

Questioning of order in courts

6

(1) *Subject to sub-paragraph (3) below, if any person desires to question the validity of an order under this Schedule on the ground—*

- (a) *that it is not within the powers of this Schedule, or*
(b) *that any requirement of this Schedule has not been complied with,*

he may, within six weeks after the date of the first publication of the notice required by paragraph 5 above, make an application for the purpose to the High Court.

(2) *On an application under this paragraph the High Court, if satisfied—*

- (a) *that the order is not within the powers of this Schedule, or*
(b) *that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the requirements of this Schedule,*

may quash the order either generally or in so far as it affects the applicant.

(3) *Sub-paragraph (1) above—*

- (a) *shall not apply to any order which is confirmed by Act of Parliament under section 6 of the Statutory Orders (Special Procedure) Act 1945; and*
(b) *shall have effect in relation to any other order which is subject to special parliamentary procedure by virtue of the provisions of this Schedule as if the reference to the date of the first publication of the notice required by paragraph 5 above were a reference to the date on which the order becomes operative under that Act of 1945.*

(4) *Except as provided by this paragraph the validity of an order under this Schedule shall not, either before or after the order has been made, be questioned in any legal proceedings whatsoever.*

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i).

Para 1: in sub-para (1)(a) word "or" in italics repealed by the Water Act 2003, ss 68(1), (2)(a), 101(2), Sch 9, Pt 3.

Date in force (in relation to England and Wales): 1 April 2004: see SI 2004/641, art 3(q), (z)(v).

Date in force (in relation to Scotland): to be appointed: see the Water Act 2003, s 105(3), (5).

Para 1: sub-para (1)(c), (d) inserted by the Water Act 2003, s 68(1), (2)(b).

Date in force (in relation to England and Wales): 1 April 2004: see SI 2004/641, art 3(q).
Date in force (in relation to Scotland): to be appointed: see the Water Act 2003, s 105(3), (5).
Para 1: in sub-para (4) words “or otherwise establishing a new regional flood defence committee” in square brackets inserted by the Water Act 2003, s 68(1), (3)(a).
Date in force (in relation to England and Wales): 1 April 2004: see SI 2004/641, art 3(q).
Date in force (in relation to Scotland): to be appointed: see the Water Act 2003, s 105(3), (5).
Para 1: in sub-para (4)(a) words “or new” in square brackets inserted by the Water Act 2003, s 68(1), (3)(b).
Date in force (in relation to England and Wales): 1 April 2004: see SI 2004/641, art 3(q).
Date in force (in relation to Scotland): to be appointed: see the Water Act 2003, s 105(3), (5).
Para 1: in sub-para (5)(b) word “and” in italics repealed by the Water Act 2003, ss 68(1), (4), 101(2), Sch 9, Pt 3.
Date in force (in relation to England and Wales): 1 April 2004: see SI 2004/641, art 3(q), (z)(v).
Date in force (in relation to Scotland): to be appointed: see the Water Act 2003, s 105(3), (5).
Para 1: sub-para (5)(ba), (bb) inserted by the Water Act 2003, s 68(1), (4).
Date in force (in relation to England and Wales): 1 April 2004: see SI 2004/641, art 3(q).
Date in force (in relation to Scotland): to be appointed: see the Water Act 2003, s 105(3), (5).

SCHEDULE 5

MEMBERSHIP AND PROCEEDINGS OF REGIONAL AND LOCAL FLOOD DEFENCE COMMITTEES

NOTES

Amendment

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.
Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i); for transitional provisions see art 5(2) thereof.

Section 19

NOTES

Amendment

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.
Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i); for transitional provisions see art 5(2) thereof.

Part I

Membership of Flood Defence Committees

NOTES

Amendment

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.
Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i); for transitional provisions see art 5(2) thereof.

Terms of membership

1

(1) *Members of a flood defence committee (that is to say a regional flood defence committee or a local flood defence committee), other than those appointed by or on behalf of one or more constituent*

councils, shall hold and vacate office in accordance with the terms of their appointment.

(2) The first members of a local flood defence committee appointed by or on behalf of any one or more constituent councils—

- (a) shall come into office on the day on which the committee comes into existence or, in the case of a member who is for any reason appointed after that day, on the day on which the appointment is made; and*
- (b) subject to the following provisions of this Schedule, shall hold office until the end of May in such year as may be specified for the purposes of this paragraph in the scheme establishing the committee.*

(3) Any members of a flood defence committee appointed by or on behalf of any one or more constituent councils who are not members to whom sub-paragraph (2) above applies—

- (a) shall come into office at the beginning of the June next following the day on which they are appointed; and*
- (b) subject to the following provisions of this Schedule, shall hold office for a term of four years.*

(4) If for any reason any such member as is mentioned in sub-paragraph (3) above is appointed on or after the day on which he ought to have come into office, he shall—

- (a) come into office on the day on which he is appointed; and*
- (b) subject to the following provisions of this Schedule, hold office for the remainder of the term.*

(5) References in this paragraph and the following provisions of this Schedule to a member of a flood defence committee include references to the chairman of such a committee.

Membership of constituent council as qualification for membership of committee

2

(1) Members of a flood defence committee appointed by or on behalf of any one or more constituent councils may be members of that council, or one of those councils, or other persons.

(2) Any member of a flood defence committee appointed by or on behalf of a constituent council who at the time of his appointment was a member of that council shall, if he ceases to be a member of that council, also cease to be a member of the committee with whichever is the earlier of the following—

- (a) the end of the period of three months beginning with the date when he ceases to be a member of the council; and*
- (b) the appointment of another person in his place.*

(3) For the purposes of sub-paragraph (2) above a member of a council shall not be deemed to have ceased to be a member of the council by reason of retirement if he has been re-elected a member of the council not later than the date of his retirement.

Disqualification for membership of committee

3

(1) Subject to the following provisions of this paragraph, a person shall be disqualified for appointment as a member of a flood defence committee if he—

- (a) *is a paid officer of the Agency; or*
- (b) *is a person who has been adjudged bankrupt, or whose estate has been sequestrated or who has made a composition or arrangement with, or granted a trust deed for, his creditors; or*
- (c) *within the period of five years before the day of his appointment, has been convicted, in the United Kingdom, the Channel Islands or the Isle of Man, of any offence and has had passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine; or*
- (d) *is disqualified for being elected or for being a member of a local authority under [the Audit Commission Act 1998] or Part III of the Representation of the People Act 1983 (legal proceedings).*

(2) *Where a person is disqualified under sub-paragraph (1) above by reason of having been adjudged bankrupt, the disqualification shall cease—*

- (a) *unless the bankruptcy order made against that person is previously annulled, on his discharge from bankruptcy; and*
- (b) *if the bankruptcy order is so annulled, on the date of the annulment.*

(3) *Where a person is disqualified under sub-paragraph (1) above by reason of having had his estate sequestrated, the disqualification shall cease—*

- (a) *unless the sequestration is recalled or reduced, on the person's discharge under section 54 of the Bankruptcy (Scotland) Act 1985; and*
- (b) *if the sequestration is recalled or reduced, on the date of the recall or reduction.*

(4) *Where a person is disqualified under sub-paragraph (1) above by reason of his having made a composition or arrangement with, or having granted a trust deed for, his creditors, the disqualification shall cease—*

- (a) *if he pays his debts in full, on the date on which the payment is completed; and*
- (b) *in any other case, at the end of five years from the date on which the terms of the deed of composition or arrangement, or of the trust deed, are fulfilled.*

(5) *For the purposes of sub-paragraph (1)(c) above the date of the conviction shall be taken to be—*

- (a) *the ordinary date on which the period allowed for making an appeal or application with respect to the conviction expires; or*
- (b) *if such an appeal or application is made, the date on which it is finally disposed of or abandoned or fails by reason of non-prosecution.*

(6) *Section 92 of the Local Government Act 1972 (proceedings for disqualification) shall apply in relation to disqualification under this paragraph for appointment as a member of a flood defence committee as it applies in relation to disqualification for acting as a member of a local authority.*

Vacation of office by disqualifying event

4

(1) *The office of a member of a flood defence committee shall become vacant upon the fulfilment of any of the following conditions, that is to say—*

- (a) *the person holding that office is adjudged bankrupt, is a person whose estate is sequestrated or makes a composition or arrangement with, or grants a trust deed for, his creditors;*
- (b) *that person is convicted, in the United Kingdom, the Channel Islands or the Isle of Man, of any offence and has passed on him a sentence of imprisonment (whether suspended or not) for a period of not less than three months without the option of a fine;*
- (c) *that person is disqualified for being elected or for being a member of a local authority under [the Audit Commission Act 1998] or Part III of the Representation of the People Act 1983 (legal proceedings); or*
- (d) *that person has, for a period of six consecutive months been absent from meetings of the committee, otherwise than by reason of illness or some other cause approved during the period by the committee.*

(2) *For the purposes of sub-paragraph (1)(d) above, the attendance of a member of a flood defence committee—*

- (a) *at a meeting of any sub-committee of the committee of which he is a member, or*
- (b) *at any joint committee to which he has been appointed by that committee,*

shall be treated as attendance at a meeting of the committee.

Resignation of office by members of regional committee

5

(1) *The chairman of a regional flood defence committee may resign his office at any time by giving notice to the chairman of the Agency and to one of the Ministers.*

(2) *Any other member of such a committee may resign his office at any time by giving notice to the chairman of the committee and also, if he was appointed by one of the Ministers, to that Minister.*

Resignation of office by members of local committee

6

(1) *The chairman of a local flood defence committee may resign his office at any time by giving notice to the chairman of the regional flood defence committee.*

(2) *Any other member of a local flood defence committee may resign his office at any time by giving notice to the chairman of that local flood defence committee.*

Appointments to fill casual vacancies

7

(1) *Where, for any reason whatsoever, the office of a member of a flood defence committee becomes vacant before the end of his term of office, the vacancy—*

- (a) *shall, if the unexpired portion of the term of office of the vacating member is six months or more, be filled by the appointment of a new member; and*
- (b) *may be so filled in any other case.*

(2) *A person appointed by virtue of sub-paragraph (1) above to fill a casual vacancy shall hold office*

for so long only as the former member would have held office.

Eligibility of previous members for re-appointment

8

Subject to the provisions of this Schedule, a member of a flood defence committee shall be eligible for reappointment.

Appointment of deputies

9

(1) *Subject to the following provisions of this paragraph, a person nominated by one or more constituent councils may act as deputy for a member of a flood defence committee appointed by or on behalf of that council or those councils and may, accordingly, attend and vote at a meeting of the committee, instead of that member.*

(2) *A person nominated under sub-paragraph (1) above as deputy for a member of a flood defence committee may, by virtue of that nomination, attend and vote at a meeting of a sub-committee of that committee which—*

(a) *has been appointed by that committee under Part II of this Schedule; and*

(b) *is a committee to which the member for whom he is a deputy belongs.*

(3) *A person acting as deputy for a member of a flood defence committee shall be treated for the purposes for which he is nominated as a member of that committee.*

(4) *A person shall not act as deputy for a member of a flood defence committee unless his nomination has been notified to such officer of the Agency as is appointed to receive such nominations.*

(5) *A nomination under this paragraph shall be in writing and may apply either to a particular meeting or to all meetings during a stated period or until the nomination is revoked.*

(6) *A person shall not act as deputy for more than one member of a flood defence committee.*

(7) *Nothing in this paragraph shall entitle a person to attend and vote at a meeting of a local flood defence committee by reason of his nomination as deputy for a member of a regional flood defence committee.*

Payments to past and present chairmen and to members

10

(1) *The Agency shall pay to any person who is a chairman of a flood defence committee such remuneration and allowances as may be determined by the relevant Minister.*

(2) *If the relevant Minister so determines in the case of any person who is or has been chairman of a flood defence committee, the Agency shall pay or make arrangements for the payment of a pension in relation to that person in accordance with the determination.*

(3) *If a person ceases to be chairman of a flood defence committee and it appears to the relevant Minister that there are special circumstances which make it right that that person should receive compensation in respect of his ceasing to be chairman, the relevant Minister may require the Agency to pay to that person a sum of such amount as that Minister may determine.*

(4) *The Agency may pay to any person who is a member of a flood defence committee such allowances as may be determined by the relevant Minister.*

(5) *In this paragraph—*

“pension”, in relation to any person, means a pension (whether contributory or not) of any kind payable to or in respect of him, and includes an allowance, gratuity or lump sum so payable and a return of contributions with or without interest or any other addition; and

“the relevant Minister”—

(a) *in relation to the regional flood defence committee for an area the whole or the greater part of which is in Wales and in relation to any local flood defence committee for any district comprised in the area of such a regional flood defence committee, means the Secretary of State; and*

(b) *in relation to any other flood defence committee, means the Minister.*

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i); for transitional provisions see art 5(2) thereof.

Para 3: in sub-para (1)(d) words “the Audit Commission Act 1998” in square brackets substituted by the Audit Commission Act 1998, s 54(1), Sch 3, para 29.

Date in force: 11 September 1998: see the Audit Commission Act 1998, s 55(2).

Para 4: in sub-para (1)(c) words “the Audit Commission Act 1998” in square brackets substituted by the Audit Commission Act 1998, s 54(1), Sch 3, para 29.

Date in force: 11 September 1998: see the Audit Commission Act 1998, s 55(2).

Part II

Proceedings of Flood Defence Committees

NOTES

Amendment

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i); for transitional provisions see art 5(2) thereof.

Appointment of sub-committees, joint sub-committees etc

11

(1) *For the purpose of carrying out any functions in pursuance of arrangements under paragraph 12 below—*

(a) *a flood defence committee may appoint a sub-committee of the committee;*

- (b) *two or more regional or two or more local flood defence committees may appoint a joint sub-committee of those committees;*
- (c) *any sub-committee may appoint one or more committees of that sub-committee (“under sub-committees”).*

(2) *The number of members of any sub-committee and their terms of office shall be fixed by the appointing committee or committees or, in the case of an under sub-committee, by the appointing sub-committee.*

(3) *A sub-committee appointed under this paragraph may include persons who are not members of the appointing committee or committees or, in the case of an under sub-committee, the committee or committees of whom they are an under sub-committee; but at least two thirds of the members appointed to any such sub-committee shall be members of that committee or those committees, as the case may be.*

(4) *A person who is disqualified for being a member of a flood defence committee shall be disqualified also for being a member of a sub-committee or under sub-committee appointed under this paragraph.*

Delegation of functions to sub-committees etc

12

(1) *Subject to section 106 of the 1991 Act and to any other express provision contained in any enactment, a flood defence committee may arrange for the carrying out of any of their functions—*

- (a) *by a sub-committee, or an under sub-committee of the committee or an officer of the Agency;
or*
- (b) *by any other regional or, as the case may be, local flood defence committee;*

and two or more regional or two or more local flood defence committees may arrange to carry out any of their functions jointly or may arrange for the carrying out of any of their functions by a joint sub-committee of theirs.

(2) *Where by virtue of this paragraph any functions of a flood defence committee or of two or more such committees may be carried out by a sub-committee, then, unless the committee or committees otherwise direct, the sub-committee may arrange for the carrying out of any of those functions by an under sub-committee or by an officer of the Agency.*

(3) *Where by virtue of this paragraph any functions of a flood defence committee or of two or more such committees may be carried out by an under sub-committee, then, unless the committee or committees or the sub-committee otherwise direct, the under sub-committee may arrange for the carrying out of any of those functions by an officer of the Agency.*

(4) *Any arrangements made by a flood defence committee under this paragraph for the carrying out of any function shall not prevent the committee from discharging their functions themselves.*

(5) *References in the preceding provisions of this paragraph to the carrying out of any functions of a flood defence committee include references to the doing of anything which is calculated to facilitate, or is conducive or incidental to, the carrying out of any of those functions.*

(6) *A regional flood defence committee shall not, under this paragraph, make arrangements for the carrying out in a local flood defence district of any functions which fall to be carried out there by the local flood defence committee.*

Rules of procedure

13

- (1) *A flood defence committee may, with the approval of the relevant Minister, make rules for regulating the proceedings of the committee.*
- (2) *Nothing in section 6(4) of this Act or section 105 or 106 of the 1991 Act shall entitle the Agency to make any arrangements or give any directions for regulating the proceedings of any flood defence committee.*
- (3) *In this paragraph “the relevant Minister” has the same meaning as in paragraph 10 above.*

Declarations of interest etc

14

- (1) *Subject to the following provisions of this paragraph, the provisions of sections 94 to 98 of the Local Government Act 1972 (pecuniary interests of members of local authorities) shall apply in relation to members of a flood defence committee as those provisions apply in relation to members of local authorities.*
- (2) *In their application by virtue of this paragraph those provisions shall have effect in accordance with the following provisions—*
 - (a) *for references to meetings of the local authority there shall be substituted references to meetings of the committee;*
 - (b) *in section 94(4), for the reference to provision being made by standing orders of a local authority there shall be substituted a reference to provisions being made by directions of the committee;*
 - (c) *in section 96, for references to the proper officer of the local authority there shall be substituted a reference to an officer of the Agency appointed for the purposes of this paragraph; and*
 - (d) *section 97 shall apply as it applies to a local authority other than a parish or community council.*
- (3) *Subject to sub-paragraph (4) below, a member of a flood defence committee shall be disqualified, for so long as he remains such a member and for twelve months after he ceases to be such a member, for appointment to any paid office by the Agency or any regional flood defence committee.*
- (4) *Sub-paragraph (3) above shall not disqualify any person for appointment to the office of chairman of a local flood defence committee.*

Authentication of documents

15

- (1) *Any notice or other document which a flood defence committee are required or authorised to give, make or issue by or under any enactment may be signed on behalf of the committee by any member of the committee or any officer of the Agency who is generally or specifically authorised for that purpose by a resolution of the committee.*
- (2) *Any document purporting to bear the signature of a person expressed to be authorised as mentioned in sub-paragraph (1) above shall be deemed, unless the contrary is shown, to be duly given, made or issued by authority of the committee.*

(3) *In this paragraph “signature” includes a facsimile of a signature by whatever process reproduced.*

Proof and validity of proceedings

16

(1) *A minute of the proceedings of a meeting of a flood defence committee, purporting to be signed at that or the next ensuing meeting by—*

- (a) *the chairman of the meeting to the proceedings of which the minute relates, or*
- (b) *by the chairman of the next ensuing meeting,*

shall be evidence of the proceedings and shall be received in evidence without further proof.

(2) *Where a minute has been signed as mentioned in sub-paragraph (1) above in respect of a meeting of a committee or sub-committee, then, unless the contrary is shown—*

- (a) *the meeting shall be deemed to have been duly convened and held;*
- (b) *all the proceedings had at any such meeting shall be deemed to have been duly had; and*
- (c) *that committee or sub-committee shall be deemed to have been duly constituted and have had power to deal with the matters referred to in the minute.*

(3) *The validity of any proceedings of a flood defence committee shall not be affected by any vacancy among the members of the committee or by any defect in the appointment of such a member.*

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Repealed, in relation to England and Wales, by the Flood and Water Management Act 2010, s 31, Sch 2, paras 51, 53.

Date in force: 1 April 2011: see SI 2011/694, art 3(e), (i); for transitional provisions see art 5(2) thereof.

SCHEDULE 6
THE SCOTTISH ENVIRONMENT PROTECTION AGENCY

Section 20

Status

1

SEPA shall be a body corporate with a common seal.

2

Subject to section 38 of this Act, SEPA shall not—

- (a) be regarded as a servant or agent of the Crown;
- (b) have any status, immunity or privilege of the Crown;
- (c) by virtue of its connection with the Crown, be exempt from any tax, duty, rate, levy or other charge whatsoever whether general or local,

and its property shall not be regarded as property of, or held on behalf of, the Crown.

Membership

3

SEPA shall consist of not less than eight, nor more than twelve, members appointed by the Secretary of State.

4

In making appointments under paragraph 3 above, the Secretary of State shall have regard to the desirability of appointing persons who have knowledge or experience in some matter relevant to the functions of SEPA.

5

Subject to paragraphs 7 and 8 below, each member—

- (a) shall hold and vacate office in accordance with the terms of his appointment;
- (b) may, by giving notice to the Secretary of State, resign his office; and
- (c) after ceasing to hold office shall be eligible for reappointment as a member.

6

The Secretary of State may, by order made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, amend paragraph 3 above so as to substitute for the numbers for the time being specified as, respectively, the minimum and maximum membership such other numbers as he thinks fit.

7

The Secretary of State may remove a member from office if he is satisfied that the member—

- (a) has been absent from meetings of SEPA for a period longer than three months without the permission of SEPA; or
- (b) has been adjudged bankrupt, [has had a debt relief order (under Part 7A of the Insolvency Act 1986) made in respect of him,] has made an arrangement with his creditors, has had his estate sequestrated or has granted a trust deed for his creditors or a composition contract; or
- (c) is unable or unfit to carry out the functions of a member.

Chairman and deputy chairman

8

(1) The Secretary of State shall appoint one of the members of SEPA to be chairman and another of those members to be deputy chairman.

(2) The chairman and deputy chairman shall hold and vacate office in terms of their appointments.

(3) A member who is chairman or deputy chairman may resign his office by giving notice to the Secretary of State; but if the chairman or deputy chairman ceases to be a member (whether or not on giving notice under paragraph 5(b) above) he shall cease to be chairman or, as the case may be, deputy chairman.

(4) A person who ceases to be chairman or deputy chairman shall be eligible for reappointment as such under sub-paragraph (1) above at any time when he is a member.

Remuneration, pensions, etc

9

(1) SEPA shall—

- (a) pay to its members such remuneration and such travelling and other allowances (if any); and
- (b) as regards any member or former member in whose case the Secretary of State may so determine—

- (i) pay such pension, allowance or gratuity to or in respect of him;
- (ii) make such payments towards the provision of such pension, allowance or gratuity; or
- (iii) provide and maintain such schemes (whether contributory or not) for the payment of pensions, allowances or gratuities,

as the Secretary of State may determine.

(2) If a person ceases to be a member, and it appears to the Secretary of State that there are special circumstances which make it right that he should receive compensation, the Secretary of State may require SEPA to pay to that person a sum of such amount as the Secretary of State may determine.

Staff

10

(1) There shall be a chief officer of SEPA.

(2) The Secretary of State shall, after consultation with the chairman or person designated to be chairman (if there is a person holding or designated to hold that office), make the first appointment of chief officer on such terms and conditions as he may determine; and thereafter SEPA may, with the approval of the Secretary of State, make subsequent appointments to that office on such terms and conditions as it may with such approval determine.

11

SEPA may appoint such other employees as it thinks fit.

12

(1) SEPA shall, in the case of such of its employees or former employees as it may, with the approval of the Secretary of State, determine—

- (a) pay such pensions, allowances or gratuities to or in respect of those employees;

- (b) make such payments towards provision of such pensions, allowances or gratuities; or
- (c) provide and maintain such schemes (whether contributory or not) for the payment of such pensions, allowances or gratuities,

as it may, with the approval of the Secretary of State, determine.

(2) References in sub-paragraph (1) above to pensions, allowances or gratuities in respect of employees of SEPA include references to pensions, allowances or gratuities by way of compensation to or in respect of any such employee who suffers loss of office or employment.

Proceedings

13

(1) SEPA may regulate its own procedure and that of any committee established by it (including making provision in relation to the quorum for its meetings and the meetings of any such committee).

(2) The proceedings of SEPA and of any committee established by it shall not be invalidated by any vacancy amongst its members or the members of such committee or by any defect in the appointment of such member.

Committees

14

(1) SEPA may appoint persons who are not members of it to be members of any committee established by it, but at least one member of any such committee shall be a member of SEPA.

(2) SEPA shall pay to a person so appointed such remuneration and allowances (if any) as the Secretary of State may determine.

(3) Any committee established by SEPA shall comply with any directions given to them by it.

Delegation of powers

15

(1) Anything authorised or required by or under any enactment to be done by SEPA may be done by any of its committees which, or by any of its members or employees who, is authorised (generally or specifically) for the purpose by SEPA.

(2) Nothing in sub-paragraph (1) above shall prevent SEPA from doing anything that a committee, member or employee has been authorised or required to do.

[(3) In sub-paragraph (1) above, "enactment" includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

...

16

...

Members' interests

17

(1) A member who is in any way directly or indirectly interested in any matter that is brought up for consideration at a meeting of SEPA shall disclose the nature of his interest to the meeting; and, where such a disclosure is made—

- (a) the disclosure shall be recorded in the minutes of the meeting; and
- (b) the member shall not take any part in any deliberation or decision of SEPA or of any of its committees with respect to that matter.

(2) For the purposes of sub-paragraph (1) above, a general notification given at a meeting of SEPA by a member to the effect that he—

- (a) is a member of a specified company or firm, and
- (b) is to be regarded as interested in any matter involving that company or firm,

shall be regarded as a sufficient disclosure of his interest in relation to any such matter.

(3) A member need not attend in person at a meeting of SEPA in order to make a disclosure which he is required to make under this paragraph if he takes reasonable steps to secure that the disclosure is made by a notice which is read and considered at the meeting.

(4) The Secretary of State may, subject to such conditions as he considers appropriate, remove any disability imposed by virtue of this paragraph in any case where the number of members of SEPA disabled by virtue of this paragraph at any one time would be so great a proportion of the whole as to impede the transaction of business.

(5) The power of the Secretary of State under sub-paragraph (4) above includes power to remove, either indefinitely or for any period, a disability which would otherwise attach to any member, or members of any description, by reason of such interests, and in respect of such matters, as may be specified or described by the Secretary of State.

(6) Nothing in this paragraph precludes any member from taking part in the consideration or discussion of, or voting on, any question whether an application should be made to the Secretary of State for the exercise of the power conferred by sub-paragraph (4) above.

(7) In this paragraph—

- (a) any reference to a meeting of SEPA includes a reference to a meeting of any of SEPA's committees; and
- (b) any reference to a member includes a reference to a person who is not a member of SEPA but who is a member of any such committee.

Minutes

18

(1) Minutes shall be kept of proceedings of SEPA and of its committees.

(2) Minutes of any such proceedings shall be evidence of those proceedings if they are signed by a person purporting to have acted as chairman of the proceedings to which the minutes relate or of any subsequent proceedings in the course of which the minutes were approved as a correct record.

(3) Where minutes of any such proceedings have been signed as mentioned in sub-paragraph (2)

above, those proceedings shall, unless the contrary is shown, be deemed to have been validly convened and constituted.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 12 October 1995: see SI 1995/2649, art 2(a).

Amendment

Para 7: in sub-para (b) words from “has had a” to “respect of him,” in square brackets inserted by SI 2012/2404, art 3(2), Sch 2, para 33(1), (3).

Date in force: 1 October 2012: see SI 2012/2404, art 1; for transitional provisions see art 5 thereof.

Para 15: sub-para (3) inserted by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 6, para 43(1), (13).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Para 16: repealed by the Public Services Reform (Scotland) Act 2010, s 8(2).

Date in force: 1 August 2010: see SSI 2010/221, art 3(2), Schedule.

SCHEDULE 7 NATIONAL PARK AUTHORITIES

Section 63

Status and constitution of authorities

1

(1) A National Park authority shall be a body corporate.

[(2) A National Park authority shall consist of—

- (a) a specified number of local authority members,
- (b) in the case of a National Park in England, a specified number of parish members to be appointed by the Secretary of State, and
- (c) a specified number of other members to be appointed by the Secretary of State;

and “specified” means specified in the relevant order.

(3) The total number of—

- (a) local authority members, and
- (b) parish members,

must exceed the number of other members.]

Local authority members

2

(1) The local authority members of a National Park authority shall be appointed by such of the

councils for the principal areas wholly or partly comprised in the relevant Park as may be specified in or determined under the relevant order.

(2) Each of the councils who are to appoint the local authority members of a National Park authority shall be entitled to appoint such number of those members as may be so specified or determined and to make any appointment required by reason of a vacancy arising in respect of a member appointed by that council.

(3) Before making any provision by the relevant order as to—

- (a) the number of members of a National Park authority who are to be local authority members,
- (b) the councils by whom the local authority members of a National Park authority are to be appointed, or
- (c) the number of members to be appointed by each such council,

the Secretary of State shall consult the council for every principal area the whole or any part of which is comprised in the relevant Park; and the Secretary of State may make provision for excluding the council for any such area from the councils by whom the local authority members of a National Park authority are to be appointed only at the request of that council.

(4) A person shall not be appointed as a local authority member of a National Park authority unless he is a member of a principal council the area of which is wholly or partly comprised in the relevant Park; and, in appointing local authority members of a National Park authority, a principal council shall have regard to the desirability of appointing members of the council who represent wards, or (in Wales) electoral divisions, situated wholly or partly within the relevant Park.

(5) Subject to the following provisions of this Schedule, where a person who qualifies for his appointment by virtue of his membership of any council is appointed as a local authority member of a National Park authority—

- (a) he shall hold office from the time of his appointment until he ceases to be a member of that council; but
- (b) his appointment may, before any such cessation, be terminated for the purposes of, and in accordance with, sections 15 to 17 of the Local Government and Housing Act 1989 (political balance).

[(5A) Sub-paragraph (5B) applies to a person who retires from being a member of a council by virtue of an election.

(5B) Sub-paragraph (5)(a) does not terminate his office as member of a National Park authority until—

- (a) three months after he retires from being a member of the council, or
- (b) if earlier, the day on which the National Park authority receives notice of a proposed replacement appointment;

but if he is re-elected he is eligible for re-appointment to the National Park authority.]

(7) The appointment of any person as a local authority member of a National Park authority may provide that he is not to be treated for the purposes of sub-paragraph (5) above as qualifying for his appointment by virtue of his membership of any council other than that specified in the appointment.

(8) . . .

Parish members of English National Park authorities

3

(1) The parish members of an English National Park authority shall be appointed by the Secretary of State.

(2) A person shall not be appointed as a parish member of an English National Park authority unless he is—

- (a) a member of the parish council for a parish the whole or any part of which is comprised in the relevant Park; or
- (b) the chairman of the parish meeting of a parish—
 - (i) which does not have a separate parish council; and
 - (ii) the whole or any part of which is comprised in the relevant Park.

(3) Subject to the following provisions of this Schedule, where a person who qualifies for his appointment by virtue of his membership of a parish council is appointed as a parish member of an English National Park authority, he shall hold office from the time of his appointment until he ceases to be a member of that parish council.

[(4A) Sub-paragraph (4B) applies to a person who retires from being a member of a parish council by virtue of an election.

(4B) Sub-paragraph (3) does not terminate his office as member of a National Park authority until—

- (a) three months after he ceases to be a member of the parish council, or
- (b) if earlier, the day on which the National Park authority receives notice of a proposed replacement appointment;

but if he is re-elected he is eligible for re-appointment to the National Park authority.]

(5) Subject to the following provisions of this Schedule, where a person who qualifies for his appointment by virtue of his being the chairman of a parish meeting is appointed as a parish member of an English National Park authority, he shall hold office from the time of his appointment until he ceases to be the chairman of that parish meeting.

[(5A) Sub-paragraph (5B) applies to a person who retires from being chairman of a parish meeting by virtue of an election.

(5B) Sub-paragraph (5) does not terminate his office as member of a National Park authority until—

- (a) three months after he retires from being chairman, or
- (b) if earlier, the day on which the National Park authority receives notice of a proposed replacement appointment;

but if he is re-elected as chairman he is eligible for re-appointment to the National Park authority.]

(7) Subject to the provisions of this Schedule, a parish member of an English National Park authority shall hold office in accordance with the terms of his appointment.

(8) In this paragraph, “English National Park authority” means a National Park authority for a National

Park in England.

Members (other than parish members) appointed by the Secretary of State

4

- (1) Before appointing any person as a member of a National Park authority the Secretary of State shall consult, according to whether the relevant Park is in England or in Wales, either [Natural England] or [the Natural Resources Body for Wales].
- (2) Subject to the following provisions of this Schedule, a person appointed as a member of a National Park authority by the Secretary of State—
 - (a) shall hold office for such period of not less than one year nor more than [four years] as may be specified in the terms of his appointment; but
 - (b) on ceasing to hold office shall be eligible for re-appointment.
- (3) The term of office of a person appointed by the Secretary of State to fill such a vacancy in the membership of a National Park authority as occurs where a person appointed by the Secretary of State ceases to be a member of the authority before the end of his term of office may be for a period of less than one year if it is made to expire with the time when the term of office of the person in respect of whom the vacancy has arisen would have expired.
- (4) Subject to the provisions of this Schedule, a member of a National Park authority appointed by the Secretary of State shall hold office in accordance with the terms of his appointment.
- (5) This paragraph shall not apply to persons appointed as parish members of a National Park authority for a National Park in England or to their appointment as such members.

Chairman and deputy chairman

5

- (1) The members of a National Park authority shall elect, from amongst their members, both a chairman and a deputy chairman of the authority.
- (2) Subject to sub-paragraphs (3) and (4) below, the chairman and deputy chairman of a National Park authority shall be elected for a period not exceeding one year; but a person so elected shall, on ceasing to hold office at the end of his term of office as chairman or deputy chairman, be eligible for re-election.
- (3) A person shall cease to hold office as chairman or deputy chairman of a National Park authority if he ceases to be a member of the authority.
- (4) Where a vacancy occurs in the office of chairman or deputy chairman of a National Park authority, it shall be the duty of the members of that authority to secure that that vacancy is filled as soon as possible.

Removal of members

6

- (1) The Secretary of State may, by giving a local authority member of a National Park authority such written notice of the termination of his appointment as the Secretary of State considers appropriate, remove that member from office; but he shall do so only where he considers it appropriate to remove that

member from office in consequence of the provisions of any order for varying either the area of the relevant Park or the number of local authority members of that authority.

(2) The Secretary of State may remove from office any member of a National Park authority appointed by him, other than any parish member of a National Park authority for a National Park in England, either—

- (a) by giving that member three months' written notice of the termination of the appointment; or
- (b) in such other manner as may be provided for in the terms of that member's appointment.

(3) The Secretary of State may remove from office any parish member of a National Park authority for a National Park in England either—

- (a) by giving that member such written notice of the termination of his appointment as the Secretary of State considers appropriate; or
- (b) in such other manner as may be provided for in the terms of that member's appointment;

but a parish member shall only be removed from office in the manner mentioned in paragraph (a) above where the Secretary of State considers it appropriate to do so in consequence of the provisions of any order for varying either the area of the relevant Park or the number of parish members of the National Park authority in question.

Disqualification of members

7

(1) A person is disqualified for becoming or remaining a member of a National Park authority if he holds any paid office or employment appointments to which are or may be made or confirmed by—

- (a) the authority itself or any council by whom a local authority member of the authority is appointed;
- (b) any committee or sub-committee of the authority or of any such council;
- (c) any joint committee on which the authority or any such council is represented;
- (d) as respects a National Park authority for a National Park in England—
 - (i) any parish council for, or parish meeting of, a parish the whole or any part of which is comprised in the relevant Park;
 - (ii) any committee or sub-committee of any such parish council or any committee of any such parish meeting; or
 - (iii) any joint committee on which any such parish council or parish meeting is represented; or
- (e) any person himself holding an office or employment which disqualifies him for becoming a member of the authority.

(2) A person is also disqualified for becoming or remaining a member of a National Park authority if he holds any employment in a company which, in accordance with Part V of the Local Government and Housing Act 1989 other than section 73, is under the control of that authority.

(3) Section 92 of the 1972 Act (proceedings for disqualification) shall have effect in relation to a person who acts or claims to be entitled to act as a member of a National Park authority as it applies in

relation to a person who acts or claims to be entitled to act as a member of a local authority, but as if—

- (a) references in that section to a local government elector for the area concerned were references to a local government elector for any principal area the whole or any part of which is comprised in the relevant Park; and
- (b) in subsection (6)(b) of that section (failure to deliver declaration of acceptance of office), the words from “of failure” to “or by reason” were omitted.

(4) Sections 1 to [3A] of the Local Government and Housing Act 1989 (disqualification of persons holding politically restricted posts) shall have effect as if a National Park authority were a local authority for the purposes of Part I of that Act.

(5) < . . . >

Vacation of office for failure to attend meetings

8

Section 85 of the 1972 Act (failure to attend meetings) shall have effect in relation to a National Park authority as it has effect in relation to a local authority.

. . .

9

. . .

10

. . .

Allowances and time off for members

11

(1) *National Park authority shall be a body to which sections 174 to 176 of the 1972 Act (allowances for travelling, conferences and visits) shall apply and shall also be deemed to be a relevant authority for the purposes of section 18 of the Local Government and Housing Act 1989 (basic attendance and special responsibility allowances).*

(2) *For the purposes of sub-paragraph (1) above references in section 18 of that Act of 1989 to a member of an authority who is a councillor shall be deemed, in relation to a National Park authority, to include references to a member of that authority who is appointed as such a member by the Secretary of State.*

(3) < . . . > section 10 of that Act of 1989 (limit on paid leave for local authority duties) shall have effect as if a National Park authority were a relevant council for the purposes of that section.

Meetings and proceedings of the authority

12

(1) The following provisions, that is to say—

- (a) the provisions of Part VI of Schedule 12 to the 1972 Act (proceedings and meetings of local

authorities) and of section 99 of that Act so far as it relates to that Part of that Schedule; and

(b) the provisions of section 100 of that Act (admission of the public and press),

shall have effect as if a National Park authority were a local authority for the purposes of those provisions.

(2) < . . . >

(3) Section 20 of the Local Government and Housing Act 1989 (power to require adoption of certain procedural standing orders) shall have effect as if a National Park authority were a relevant authority for the purposes of that section.

(4) The validity of any proceedings of a National Park authority shall not be affected by a vacancy amongst its members, by any defect in the appointment of a member of the authority or by the want of qualification, or the disqualification, of any such member.

Committees and sub-committees and officers

13

(1) Sections 101 to 106 of the 1972 Act (arrangements for committees and sub-committees) shall have effect as if a National Park authority were a local authority for the purposes of those sections.

(2) Accordingly, section 13 of the Local Government and Housing Act 1989 (voting rights of members of certain committees) shall have effect as if a National Park authority were a relevant authority for the purposes of that section.

(3) It shall be the duty of a National Park authority, in relation to any committee or sub-committee to which this sub-paragraph applies, to secure—

- (a) that the membership of the committee or sub-committee consists of or includes both local authority members of the authority and at least one member appointed to the authority by the Secretary of State;
- (b) that the division of members of the authority who are members of the committee or sub-committee between—
 - (i) local authority members, and
 - (ii) members appointed to the authority by the Secretary of State,

is (as nearly as possible using whole numbers) in the same proportions as required, by virtue of paragraph 1(2) above, in the case of the authority itself; and

- (c) that the quorum of the committee or sub-committee includes at least one local authority member of the authority and at least one member appointed to the authority by the Secretary of State.

(4) Sub-paragraph (3) above applies in the case of any National Park authority to the following committees and sub-committees, except those appointed under section 102(4) or (4A) of the 1972 Act (advisory committees), that is to say—

- (a) any committee or sub-committee of the authority;
- (b) any joint committee on which the authority is represented; and
- (c) any sub-committee of such a joint committee.

(5) The proceedings of a committee or sub-committee to which sub-paragraph (3) above applies shall not be invalidated by any failure of a National Park authority to perform its duty under that sub-paragraph.

(6) The provisions of sections 112 to 119 and 151 of the 1972 Act (staff of local authorities) and of section 30 of the Local Government (Miscellaneous Provisions) Act 1976 (power to forgo repayment of remuneration) shall have effect as if a National Park authority were a local authority for the purposes of those provisions.

(7) The following provisions of the Local Government and Housing Act 1989 shall apply in relation to a National Park authority as they apply in relation to the authorities which are relevant authorities for the purposes of those provisions, that is to say—

- (a) section 4 (designation and reports of head of paid service);
- (b) section 5 (designation and reports of monitoring officer); and
- (c) with the omission of subsection (4)(d) (assistants for political groups), section 8 (standing orders with respect to staff);

and section 7 of that Act (staff to be appointed on merit) shall apply to any appointment to paid office or employment under a National Park authority as it applies to an appointment to paid office or employment under a body which is a local authority for the purposes of Part I of that Act.

(8) Section 12 of that Act of 1989 (conflict of interest in staff negotiations) shall have effect as if references in that section to a local authority included references to a National Park authority.

National Park Officer

14

(1) Every National Park authority for a National Park shall secure that there is at all times an officer appointed by that authority to be responsible to the authority for the manner in which the carrying out of its different functions is co-ordinated.

(2) For the purposes of this paragraph a National Park authority may adopt—

- (a) any appointment which an existing authority has made under paragraph 15 of Schedule 17 to the 1972 Act in relation to any area wholly or partly comprised in the relevant Park; or
- (b) if the relevant Park is in Wales, any appointment—
 - (i) which was made under that paragraph in relation to any such area, and
 - (ii) which was adopted by a National Park planning board, as defined in section 64 of this Act, by virtue of an order under paragraph 3A of Schedule 17 to the 1972 Act or section 2(1B) of the Town and Country Planning Act 1990.

(3) Before making or adopting an appointment under this paragraph or assigning additional responsibilities to a person holding such an appointment, a National Park authority shall consult, according to whether the Park in question is in England or in Wales, either [Natural England] or [the Natural Resources Body for Wales].

(4) Sub-paragraph (3) above shall not apply in relation to the adoption of an appointment under this paragraph in relation to a National Park in Wales in any case where—

- (a) the National Park authority in question is the National Park authority in relation to that National Park by virtue of an order under section 63 of this Act made by virtue of section 64(1) of this

Act;

- (b) the appointment in question was made or adopted by the body corporate which has so become that National Park authority, but in its capacity as the National Park planning board, as defined in section 64 of this Act, for the area of the National Park in question; and
- (c) no additional responsibilities are, on the occasion of the adoption of the appointment, to be assigned to the person holding the appointment.

(5) A person who holds office with a National Park authority by virtue of an appointment made or adopted under this paragraph—

- (a) may at the same time hold the office of head of that authority's paid service, the office of monitoring officer in relation to that authority or both those offices; but
- (b) shall not at the same time be that authority's chief finance officer (within the meaning of section 5 of the Local Government and Housing Act 1989) or hold any office under any principal council.

(6) An officer holding office with a National Park authority by virtue of an appointment made or adopted under this paragraph shall be known as a National Park officer.

Personal liability of members and officers

15

Section 265 of the Public Health Act 1875 (personal liability of members and officers of certain authorities) shall have effect as if—

- (a) a National Park authority were an authority such as is mentioned in that section;
- (b) the references in that section to a member of the authority included, in relation to a National Park authority, references to any person who is not such a member but for the time being serves as a member of a committee or sub-committee of such an authority;
- (c) the references in that section to the purpose of executing that Act and to the purposes of that Act were each, in relation to a National Park authority, references to the purpose of carrying out the functions of that authority by virtue of Part III of this Act; and
- (d) the words "or rate" were omitted.

Liaison with parish and community councils

16

A National Park authority shall make arrangements—

- (a) in the case of a National Park in England, with each parish council the area of which is comprised wholly or partly within the Park, or
- (b) in the case of a National Park in Wales, with each community council the area of which is so comprised,

for the purpose of informing and consulting that council about the authority's discharge of its functions.

Documents, notices, records, byelaws etc

17

- (1) The Local Government (Records) Act 1962 shall have effect in relation to a National Park authority as if that authority were a local authority for the purposes of that Act.
- (2) Subject to sub-paragraph (3) below, the following provisions of the 1972 Act, that is to say—
- (a) sections 224 and 225(1) (custody and deposit of documents with a proper officer of the local authority),
 - (b) sections 228 and 229 (inspection of documents and photocopies),
 - (c) section 230 (reports and returns),
 - (d) sections 231 to 234 (service and authentication of documents), and
 - (e) without prejudice to their application by virtue of any other provision of Part III of this Act, sections 236 to 238 (byelaws),

shall have effect as if for the purposes of those provisions a National Park authority were a local authority or, in the case of section 224, a principal council.

(3) References in section 228 of the 1972 Act to a local government elector shall have effect for the purposes of that section as applied by sub-paragraph (2) above as if, in relation to a National Park authority, they were references to a local government elector for any principal area the whole or any part of which is comprised in the relevant Park.

(4) Section 41 of the Local Government (Miscellaneous Provisions) Act 1976 (evidence of resolutions and minutes of proceedings) shall have effect as if a National Park authority were a local authority for the purposes of that Act.

(5) Where a National Park authority has made any byelaws and those byelaws have been confirmed, that authority shall send a copy of the byelaws as confirmed to every council for a principal area the whole or any part of which is comprised in the relevant Park.

Investigation in connection with maladministration etc

18

< . . . >

Audit by Audit Commission auditor etc

19

. . .

Meaning of "relevant order"

20

In this Schedule "the relevant order", in relation to a National Park authority, means—

- (a) the order under section 63 of this Act establishing that authority;
- (b) any order under that section relating to that authority; or
- (c) any order made in relation to that authority in exercise of the power to amend an order under that section.

NOTES

Initial Commencement

Specified date

Paras 1–6, 7(1), (3)–(5), 8–20: Specified date: 19 September 1995: see s 125(2).

To be appointed

Para 7(2): To be appointed: see s 125(3).

Appointment

Para 7(2): Appointment: 1 April 1997: see SI 1996/2560, art 2.

Extent

This Schedule does not extend to Scotland: see s 125(8).

Amendment

Para 1: sub-paras (2), (3) substituted, for sub-paras (2)–(6) as originally enacted, by the Natural Environment and Rural Communities Act 2006, s 61(1), (2).

Date in force: 10 May 2007: see SI 2007/816, art 3.

Para 2: sub-paras (5A), (5B) substituted, for sub-para (6) as originally enacted, by the Natural Environment and Rural Communities Act 2006, s 61(1), (3).

Date in force: 10 May 2007: see SI 2007/816, art 3.

Para 2: sub-para (8) inserts the Local Government and Housing Act 1989, Sch 1, para 2(1)(ba).

Para 3: sub-paras (4A), (4B) substituted, for sub-para (4) as originally enacted, by the Natural Environment and Rural Communities Act 2006, s 61(1), (4).

Date in force: 10 May 2007: see SI 2007/816, art 3.

Para 3: sub-paras (5A), (5B) substituted, for sub-para (6) as originally enacted, by the Natural Environment and Rural Communities Act 2006, s 61(1), (5).

Date in force: 10 May 2007: see SI 2007/816, art 3.

Para 4: in sub-para (1) words “Natural England” in square brackets substituted by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 146.

Date in force: 1 October 2006: see SI 2006/2541, art 2; for transitional provisions see art 3, Schedule, para 1 thereto.

Para 4: in sub-para (1) words “the Natural Resources Body for Wales” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 386.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 4: in sub-para (2)(a) words “four years” in square brackets substituted by the Natural Environment and Rural Communities Act 2006, s 61(1), (6).

Date in force: 1 October 2006: see SI 2006/2541, art 2; for transitional provisions see art 3, Schedule, para 1 thereto.

Para 7: in sub-para (4) reference to “3A” in square brackets substituted by the Local Government and Public Involvement in Health Act 2007, s 203(2).

Date in force: 1 April 2008: see SI 2008/172, art 4(m).

Para 7: sub-para (5) amends the House of Commons Disqualification Act 1975, Sch 1, Pt III.

Paras 9, 10: repealed by the Local Government Act 2000, s 107, Sch 6.

Date in force: 22 May 2012: see SI 2012/1358, art 2(b)(iv), (c).

Para 11: sub-paras (1), (2) repealed by the Local Government (Wales) Measure 2011, ss 160, 176(2), Sch 3, para 3, Sch 4, Pt F.

Date in force: 30 April 2012: see SI 2012/1187, art 2(1)(o), (q), (2)(l), (m).

Para 11: in sub-para (3), words omitted repealed by the Employment Rights Act 1996, s 242, Sch 3, Part I.

Para 12: sub-para (2) amends the Local Government Act 1972, s 100J.

Para 14: in sub-para (3) words “Natural England” in square brackets substituted by the Natural Environment and Rural Communities Act 2006, s 105(1), Sch 11, Pt 1, para 146.

Date in force: 1 October 2006: see SI 2006/2541, art 2; for transitional provisions see art 3, Schedule, para 1 thereto.

Para 14: in sub-para (3) words “the Natural Resources Body for Wales” in square brackets substituted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 386.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings

see art 10, Sch 7 thereto.

Para 18: amends the Local Government Act 1974, ss 25(1), 26(7).

Para 18: repealed in part by the Local Government and Public Involvement in Health Act 2007, s 241, Sch 18, Pt 14.

Date in force: 1 April 2008: see SI 2008/917, art 2(1)(v)(ii).

Para 19: repealed by the Audit Commission Act 1998, s 54(3), Sch 5.

Date in force: 11 September 1998: see the Audit Commission Act 1998, s 55(2).

See Further

Paras 9, 10 are disapplied as respects police authorities in England and Wales and other specified local authorities in England: the Local Authorities (Model Code of Conduct) Order 2007, SI 2007/1159, art 3(d).

Paras 9, 10 are disapplied as respects National Park authorities in Wales: see the Local Authorities (Model of Conduct) (Wales) Order 2008, SI 2008/788, art 4(2)(a), (3).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

National Park Authorities (Wales) Order 1995, SI 1995/2803 (made under paras 1(2), 2(1)–(3)).

New Forest National Park Authority (Establishment) Order 2005, SI 2005/421 (made under paras 1(2)–(6), 2(1), (2)).

National Park Authorities (England) Order 2006, SI 2006/3165 (made under paras 1(2)–(6), 2(1)–(3)).

National Park Authorities (Amendment) (England) Order 2009, SI 2009/557 (made under paras 1(2), 2(1), (2)).

National Park Authorities (England) (Amendment) Order 2014, SI 2014/571 (made under paras 1(2), (3), 2(1), (2)).

National Park Authorities (England) Order 2015, SI 2015/770 (made under paras 1(2), (3), 2(1)–(3)).

National Park Authorities (Wales) (Amendment) Order 2007, SI 2007/3423 (made under paras 1(2), 2(3)).

SCHEDULE 8

SUPPLEMENTAL AND INCIDENTAL POWERS OF NATIONAL PARK AUTHORITIES

Section 65

Powers in relation to land etc

1

(1) Subject to sub-paragraph (2) below, the following provisions, that is to say—

- (a) sections 120, 122 and 123 of the 1972 Act (powers of local authorities to acquire and dispose of land), and
- (b) sections 128 to 131 of that Act (general provisions in relation to land transactions),

shall have effect as if, for the purposes of those provisions, a National Park authority were a principal council and the relevant Park were the authority's area.

[(1A) The reference in sub-paragraph (1) to section 123 of the 1972 Act is to be interpreted as a reference to that section as amended by section 2 of the Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010 in so far as that sub-paragraph applies to a National Park authority for a National Park in Wales.]

(2) The following provisions of the Local Government (Miscellaneous Provisions) Act 1976, that is to say—

- (a) section 13 (compulsory acquisition of rights over land),
- (b) section 15 (survey of land for the purposes of compulsory purchase),
- (c) section 16 (obtaining information about land), and
- (d) section 29 (repayment of unclaimed compensation),

shall apply in relation to a National Park authority as if the authority were a local authority for the purposes of that Act.

(3) Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 (enforceability by local authorities of certain covenants relating to land) shall have effect as if references to a principal council included references to a National Park authority and as if the relevant Park were that authority's area; and for the purposes of this paragraph the reference in subsection (1) of that section to section 111 of the 1972 Act shall have effect as a reference to section 65 of this Act.

(4) This paragraph shall be without prejudice to any power conferred on a National Park authority by virtue of paragraph 2 below.

2

(1) . . .

(2) Every such reference in that Act to the acquisition or appropriation of land for planning purposes as falls to be construed in accordance with section 246 of that Act shall be taken (so far as it would not otherwise do so) to include a reference to an acquisition or appropriation of land under any power conferred by virtue of sub-paragraph (1) above.

(3) The following provisions of that Act, that is to say—

- (a) sections 251(1), 258(1), 260(1), 261, 271, 272 and 274 (extinguishing rights of way and other rights),
- (b) sections 275 and 276 (extension and modification of functions of statutory undertakers), and
- (c) section 324(6) (rights of entry),

shall have effect as if a National Park authority were a local authority for the purposes of that Act.

(4) The reference to a local authority in section 66(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (which refers to the powers of a local authority under sections 232, 233 and 235(1) of the Town and Country Planning Act 1990) shall include a reference to a National Park authority.

Miscellaneous transactions and powers

3

(1) The following provisions of the 1972 Act shall also have effect as if a National Park authority were a principal council for the purposes of that Act and as if the relevant Park were the authority's area, that is to say—

- (a) section 132 (use of premises);

- (b) section 135 (contracts of local authorities);
- (c) section 136 (contributions towards expenditure on concurrent functions);
- (d) section 139 (acceptance of gifts of property);
- (e) sections 140, 140A and 140C (insurance);
- (f) section 143 (subscriptions to local government associations); and
- (g) sections 222 and 223 (conduct of prosecutions and participation in other legal proceedings).

(2) Section 38 of the Local Government (Miscellaneous Provisions) Act 1976 (use of spare capacity of local authority computers) shall have effect as if a National Park authority were a local authority for the purposes of that Act.

(3) Section 41 of the Local Government (Miscellaneous Provisions) Act 1982 (lost property) shall have effect as if a National Park authority were a local authority for the purposes of that Act.

(4) Section 45 of that Act of 1982 (arrangements under the Employment and Training Act 1973) shall have effect as if a National Park authority were a local authority to which that section applies.

Transfer of securities on alteration of area

4

Section 146 of the 1972 Act (transfer of securities on alteration of area) shall have effect as if a National Park authority were a local authority for the purposes of that Act and as if the reference in subsection (1)(b) of that section to an enactment similar to a provision of the 1972 Act included a reference to any provision of Part III of this Act.

The Local Authorities (Goods and Services) Act 1970

5

The Local Authorities (Goods and Services) Act 1970 (supply of goods and services by local authorities) shall have effect as if a National Park authority were both a local authority and a public body for the purposes of that Act.

Power to execute works outside Park

6

Any power to execute works which is conferred on a National Park authority by virtue of Part III of this Act or any other enactment shall be taken, except in so far as the contrary intention appears, to include power, for the purposes of the carrying out of the authority's functions in relation to the relevant Park, to execute works of the relevant description outside, as well as inside, that Park.

Power to promote Bills

7

(1) Section 239 of the 1972 Act (power of local authority to promote local or personal Bills) shall have effect in relation to a National Park authority as if it were a local authority for the purposes of that Act and as if the relevant Park were the authority's area.

(2) A National Park authority shall have no power by virtue of Part III of this Act to promote a Bill for—

- (a) modifying the area of any National Park or any local government area;
- (b) modifying the authority's own constitution or that of any other National Park authority; or
- (c) modifying the status or the electoral arrangements of any such local government area.

(3) In sub-paragraph (2) above—

“electoral arrangements” means any electoral arrangements within the meaning of [Part 3 of the Local Democracy, Economic Development and Construction Act 2009] or any corresponding arrangements in relation to any area in Wales; and

“local government area” means [the area of any principal council (within the meaning of that Part) or parish council] or any area in Wales for which any council carries out functions of local government.

Competitive tendering etc

8

(1) Part III of the Local Government, Planning and Land Act 1980 (direct labour organisations) shall have effect in relation to a National Park authority as if such an authority were a local authority for the purposes of that Part.

(2) . . .

(3) . . .

(4) . . .

(5) < . . . >

(6) References in sections 8 to 10 of the Local Government Act 1992 (competition) to any provisions of that Act of 1980 or of that Act of 1988 shall include references to those provisions as they have effect by virtue of this paragraph.

Restrictions on publicity

9

Part II of the Local Government Act 1986 (restrictions on publicity) shall have effect as if a National Park authority were a local authority for the purposes of that Part.

Provisions applying in relation to companies in which authorities have interests

10

. . .

Provisions as to charges

11

< . . . > and section 151 of that Act (power to amend existing provisions as to charges) shall have effect as if references to an existing provision included references to any such provision as applied by Part III of this Act.

Service agency agreements

12

Section 25 of the Local Government (Wales) Act 1994 (service agency agreements) shall have effect as if a National Park authority for any National Park in Wales were a new principal council for the purposes of that section.

...

13

...

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This Schedule does not extend to Scotland: see s 125(8).

Amendment

Para 1: sub-para (1A) inserted, in relation to Wales, by the Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010, s 3.

Date in force: 15 December 2010: see the Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010, s 5(2).

Para 2: sub-para (1) inserts the Town and Country Planning Act 1990, s 244A.

Para 7: in sub-para (3) in definition "electoral arrangements" words "Part 3 of the Local Democracy, Economic Development and Construction Act 2009" in square brackets substituted by the Local Democracy, Economic Development and Construction Act 2009, s 67(1), Sch 4, para 7(1), (2)(a).

Date in force: 1 April 2010: see SI 2009/3318, art 4(n), (ff).

Para 7: in sub-para (3) in definition "local government area" words from "the area of" to "or parish council" in square brackets substituted by the Local Democracy, Economic Development and Construction Act 2009, s 67(1), Sch 4, para 7(1), (2)(b).

Date in force: 1 April 2010: see SI 2009/3318, art 4(n), (ff).

Para 8: sub-paras (2), (3), (5) amend the Local Government Act 1988, ss 1(1), 18, 33(3), Sch 2.

Para 8: sub-para (4) repealed by the Race Relations (Amendment) Act 2000, s 9(2), Sch 3.

Date in force: 2 April 2001: see SI 2001/566, art 2(1).

Para 8: sub-para (5) repealed by the Local Government Act 2003, s 127(2), Sch 8, Pt 1.

Date in force (in relation to England): 18 November 2003: see SI 2003/2938, art 3(i)(vi).

Date in force (in relation to Wales): 27 November 2003: see SI 2003/3034, art 2, Sch 1, Pt I.

Para 10: amends the Local Government and Housing Act 1989, s 67(3).

Para 11: words omitted amend the Local Government and Housing Act 1989, s 152(2).

Para 13: repealed by the Local Government and Public Involvement in Health Act 2007, ss 239(4), 241, Sch 18, Pt 19.

Date in force: 1 April 2008: see SI 2008/917, art 2(1)(u).

SCHEDULE 9

MISCELLANEOUS STATUTORY FUNCTIONS OF NATIONAL PARK AUTHORITIES

Section 70

Common land etc

1

(1) The enactments specified in sub-paragraph (2) below shall have effect in relation to any registered common which—

- (a) is within any National Park for which a National Park authority is the local planning authority, and
- (b) is not owned by, or vested in, any other body which is a local authority,

as if the National Park authority were a local authority for the purposes of those enactments and as if the relevant Park were that authority's area.

(2) The enactments mentioned in sub-paragraph (1) above are—

- (a) section 1 of the Commons Act 1899 (scheme for regulation);
- (b) . . .
- (c) section 23 of and Schedule 2 to the Caravan Sites and Control of Development Act 1960 (power of district council to prohibit caravans on commons) [or section 57 of and Schedule 3 to the Mobile Homes (Wales) Act 2013 (power of local authority in Wales to prohibit caravans on commons)]; and
- (d) [section 45 of the Commons Act 2006] (protection of unclaimed common land).

(3) In the Commons Act 1899 references to the council by which a scheme is made under section 1 of that Act shall be construed accordingly; and the powers conferred by sections 7 and 12 of that Act (acquisition of land and contributions to expenses) shall be exercisable by a National Park authority in relation to the relevant Park as they are exercisable by a district council in relation to their district.

(4) A National Park authority shall have the same power to make an application under section 18 of the Commons Act 1899 (modification of provisions for recreation grounds) as a local authority.

(5) References in this paragraph, in relation to an enactment specified in sub-paragraph (2) above or to any enactment contained in section 18 of the Commons Act 1899, to a local authority are references to any such local authority, within the meaning of the 1972 Act, as has functions conferred on it by or by virtue of that enactment.

(6) In this paragraph "registered common" means any land registered as common land or as a town or village green under *the Commons Registration Act 1965* [Part 1 of the Commons Act 2006].

Open spaces

2

The Open Spaces Act 1906 shall have effect as if references in that Act to a local authority included references to a National Park authority.

Nature reserves

3

Sections 21 and 22 of the National Parks and Access to the Countryside Act 1949 (establishment of nature reserves and application of enactments to local authority reserves) shall have effect as if the bodies on whom powers are conferred by section 21 of that Act included every National Park authority and as if the relevant Park were the authority's area; and references in those sections to a local authority and to their area shall be construed accordingly.

Caravan sites

4

In the Caravan Sites and Control of Development Act 1960—

- (a) section 24 (power to provide sites for caravans), and
- (b) paragraph 11 of Schedule 1 to that Act (no licence required for land occupied by a local authority),

shall have effect as if a National Park authority were a local authority for the purposes of that Act and as if the relevant Park were that authority's area.

[4A

In the Mobile Homes (Wales) Act 2013—

- (a) section 56 (power of local authority to provide mobile home sites), and
- (b) paragraph 11 of Schedule 1 (no site licence required by land owned by local authority),

shall have effect as if a National Park Authority were a local authority for the purposes of that Act and as if the relevant Park were that Authority's area.]

Country Parks

5

The Countryside Act 1968 shall have effect as if a National Park authority were a local authority for the purposes of—

- (a) sections 6 to 8 of that Act (country parks);
- (b) section 9 of that Act (powers exercisable over or near common land); and
- (c) section 41 of that Act (byelaws) in so far as it has the effect in relation to—
 - (i) any country park provided under section 7 of that Act, or
 - (ii) any land as respects which any powers under section 9 of that Act have been exercised,

of conferring powers on a local authority or of applying provisions of section 92 of the National Parks and Access to the Countryside Act 1949 (wardens);

and the references to a local authority in sections 43 to 45 of that Act of 1968 (general provisions as to the powers of local authorities) shall have effect accordingly.

Provision of information and encouragement of visitors

6

Sections 142 and 144 of the 1972 Act (provision of information about local services and encouragement of visitors) shall have effect (subject to paragraph 9 of Schedule 8 to this Act) as if a National Park authority were a local authority for the purposes of that Act and as if the relevant Park were the authority's area.

Derelict land etc

7

The provisions of section 16 of the Welsh Development Agency Act 1975 and of section 1 of the Derelict Land Act 1982 (powers for the improvement of land) shall have effect in relation to land in a National Park for which a National Park authority is the local planning authority as if references in those provisions to a local authority included references to the National Park authority and as if the relevant Park were the authority's area.

Recreational facilities

8

Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 (recreational facilities) shall have effect as if the powers conferred by that section on local authorities were also conferred, so as to be exercisable within a National Park for which a National Park authority is the local planning authority, on that authority.

Refuse Disposal

9

(1) Subject to sub-paragraph (2) below, references to a local authority in the Refuse Disposal (Amenity) Act 1978 shall have effect in relation to land in a National Park for which a National Park authority is the local planning authority as if they included references to that authority and as if the relevant Park were the authority's area.

(2) Sub-paragraph (1) above shall not apply, in relation to any time before the coming into force of the repeal of section 1 of that Act, to any reference in that section.

Ancient Monuments and Archaeological Areas

10

(1) Subject to sub-paragraph (2) below, Parts I and II of the Ancient Monuments and Archaeological Areas Act 1979 shall have effect as if in relation—

- (a) to any monument in a National Park for which a National Park authority is the local planning authority, or
- (b) to any area the whole or any part of which is comprised in such a Park, the references in those Parts to a local authority included references to that National Park authority.

(2) Section 35 of that Act (notice of operations affecting area of archaeological importance) shall have effect in relation to land in such a National Park as is mentioned in sub-paragraph (1) above as if—

- (a) any notice required to be served on a local authority under that section were required, instead, to be served on the National Park authority; and
- (b) the functions conferred on a local authority by virtue of that section had been conferred instead on the National Park authority.

(3) Section 45(2) and (3) of that Act (assistance for archaeological investigations) shall have effect as if a National Park authority were a local authority for the purposes of that Act and as if the relevant Park were the authority's area.

Footpaths and bridleways

11

The following provisions of the Highways Act 1980, that is to say—

- (a) sections 25 to 29 (footpaths and bridleways),
- (b) section 72(2) (widening of public paths),
- [(c) sections 118 to 121E (stopping up and diversion of public paths, etc), except sections 118B and 119B (stopping up and diversion for purposes of crime prevention, etc), and]
- (d) Schedule 6 (procedure for orders),

shall have effect as if references in those sections to a local authority or council included references to a National Park authority and as if the relevant Park were the authority's area.

Litter

12

The following provisions, that is to say—

- (a) section 4 of the Litter Act 1983 (consultations and proposals for the abatement of litter), and
- (b) section 88 of the Environmental Protection Act 1990 (fixed penalty notices for leaving litter),

shall have effect as if a National Park authority were a litter authority for the purposes of those provisions, as if the relevant Park were the authority's area and as if the reference in that section 4 to the authority's area were a reference to any part of the relevant Park.

Listed and historic buildings

13

(1) In the case of a building situated in a National Park for which a National Park authority is the local planning authority, that authority and no other authority shall be the appropriate authority for the purposes of sections 47 to 51 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (purchase of listed buildings etc in need of repair); and the reference to a local authority in section 88(5) of that Act (rights of entry) and in section 6 of the Historic Buildings and Ancient Monuments Act 1953 (under which grants for the acquisition of buildings in Wales may be made) shall have effect accordingly.

(2) In relation to any building or land in any such National Park, the powers conferred on a county council or county borough council by section 52 of that Act of 1990 (power to acquire building and land by agreement) shall be exercisable by the National Park authority, and not (without prejudice to their powers apart from that section) by any other authority; and subsection (2) of that section shall have effect accordingly.

(3) Section 53(1) of that Act (management of listed buildings etc acquired under the Act) shall apply in relation to the powers conferred by virtue of this paragraph on a National Park authority as it applies in relation to the powers conferred by sections 47 and 52 of that Act on a local authority.

(4) That Act shall have effect as if a National Park authority were a local authority for the purposes of—

- (a) sections 54 and 55 of that Act (urgent works to preserve listed buildings etc), and
- (b) sections 57 and 58 of that Act (power of local authorities to contribute towards preservation of

listed buildings etc),

and, in relation to those provisions, as if the relevant Park were the authority's area.

(5) In relation to the powers conferred on a National Park authority by virtue of this paragraph, section 88 of that Act (powers of entry) shall have effect as if references in that section to a local authority included references to a National Park authority.

(6) References to a local authority in section 90(1) to (4) of that Act (financial provisions) shall be deemed to include references to a National Park authority.

Hazardous substances

14

(1) For the purposes of the Planning (Hazardous Substances) Act 1990, where a National Park authority is the local planning authority for any National Park, that authority, and no other authority, shall be the hazardous substances authority for land in the relevant Park.

(2) References to a local authority in sections 12 and 38(1) to (4) of that Act (government consent to local authority activities and financial provisions) shall be deemed to include references to a National Park authority.

Local Charities

15

[Sections 294 to 297 of the Charities Act 2011] (local charities) shall have effect as if the references to a council for any area included references to a National Park authority and as if the relevant Park were the authority's area.

Overseas Assistance

16

The Local Government (Overseas Assistance) Act 1993 shall have effect as if a National Park authority were a local authority for the purposes of that Act.

NOTES

Initial Commencement

Specified date

Specified date: 19 September 1995: see s 125(2).

Extent

This Schedule does not extend to Scotland: see s 125(8).

Amendment

Para 1: sub-para (2)(b) repealed by the Commons Act 2006, s 53, Sch 6, Pt 2.

Date in force (in relation to England): 1 October 2007: see SI 2007/2584, art 2(d)(ii).

Date in force (in relation to Wales): 1 April 2012: see SI 2012/739, art 2(h)(ii).

Para 1: in sub-para (2)(c) words from "or section 57 of" to "caravans on commons" in square brackets inserted by the Mobile Homes (Wales) Act 2013, s 58(1), Sch 4, para 8(1), (2).

Date in force: 5 November 2013: see the Mobile Homes (Wales) Act 2013, s 64(1); for transitional provisions see s 58(2), Sch 5 thereto.

Para 1: in sub-para (2)(d) words "section 45 of the Commons Act 2006" in square brackets substituted by the Commons Act 2006, s 52, Sch 5, para 6(a).

Date in force (in relation to England): 20 February 2007: see SI 2007/456, art 2(a)(ii).

Date in force (in relation to Wales): 6 September 2007: see SI 2007/2386, art 3(k), (o)(ii).
Para 1: in sub-para (6) words “the Commons Registration Act 1965” in italics repealed and subsequent words in square brackets substituted by the Commons Act 2006, s 52, Sch 5, para 6(b).

Date in force (in relation to England for certain purposes): 31 October 2011: see SI 2011/2460, art 2(a)(ii), (b); for transitional provision see art 3 thereof.

Date in force (in relation to England for certain purposes): 12 November 2014: see SI 2014/3026, art 3(1)(h).

Date in force (in relation to England for remaining purposes): 15 December 2014: see SI 2014/3026, art 3(1)(h); for savings see art 5.

Date in force (in relation to Wales): to be appointed: see the Commons Act 2006, s 56(1).

Para 4A: inserted by the Mobile Homes (Wales) Act 2013, s 58(1), Sch 4, para 8(1), (3).

Date in force: 5 November 2013: see the Mobile Homes (Wales) Act 2013, s 64(1); for transitional provisions see s 58(2), Sch 5 thereto.

Para 11: sub-para (c) substituted by the Countryside and Rights of Way Act 2000, s 57, Sch 6, Pt II, para 26.

Date in force (in relation to England): 12 February 2003: see SI 2003/272, art 2(s).

Date in force (in relation to Wales): 6 December 2006: see SI 2006/3257, art 2(a)(ii).

Para 15: words “Sections 294 to 297 of the Charities Act 2011” in square brackets substituted by the Charities Act 2011, s 354(1), Sch 7, Pt 2, para 68.

Date in force: 14 March 2012: see the Charities Act 2011, s 355; for transitional provisions and savings see s 354(2), Sch 8, Pt 1 thereto.

See Further

See further, the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3226, arts 1(2), 2, 5, which states that upon the transfer of its functions, property, rights and liabilities to the National Assembly for Wales on 1 April 2006, the Welsh Development Agency ceases to exist.

SCHEDULE 10 MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO NATIONAL PARKS

Section 78

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The Land Compensation Act 1961 (c 33)

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(1) Paragraph 55(2) of Schedule 16 to the 1972 Act (which relates to the operation of section 17 of the Land Compensation Act 1961 in a National Park) shall not apply in the case of a National Park for which a National Park authority is the local planning authority.

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The Electricity Act 1989 (c 29)

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(1) Paragraph 2(6) of Schedule 8 to the Electricity Act 1989 (definition of “relevant planning authority” for the purposes of consents under that Act) shall be amended in accordance with the following provisions of this paragraph.

(2) In this paragraph “the 1994 amendment” means the omission of the words “and Wales” in paragraph (a) of the said paragraph 2(6) by paragraph 22 of Schedule 6 to the Local Government (Wales) Act 1994.

(3) If the 1994 amendment comes into force after this paragraph, then—

- (a) in paragraph (a) of the said paragraph 2(6), for the words “England and Wales” there shall be substituted the words “land in England and Wales which is not in a National Park for which a National Park authority is the local planning authority”;

(b) after that paragraph (a) there shall be inserted the following paragraph—

[ISOB

“(aa) in relation to land in England and Wales which is in a National Park for which a National Park authority is the local planning authority, means that National Park authority; and”;

[ISOE

and

(c) the 1994 amendment shall have effect in relation to the said paragraph (a) as amended by paragraph (a) above, and on the coming into force of the 1994 amendment the words “and Wales” shall also be omitted from the paragraph (aa) inserted by paragraph (b) above.

(4) If the 1994 amendment comes into force before this paragraph, then—

(a) in paragraph (a) of the said paragraph 2(6), for the word “England” there shall be substituted the words “land in England which is not in a National Park for which a National Park authority is the local planning authority”; and

(b) after that paragraph (a) there shall be inserted the following paragraph—

[ISOB

“(aa) in relation to land in England which is in a National Park for which a National Park authority is the local planning authority, means that National Park authority; and”.

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(5) If the 1994 amendment comes into force on the same day as this paragraph, the 1994 amendment shall be deemed to have come into force immediately before this paragraph (and subparagraph (4) above shall have effect accordingly).

(6) The paragraph (aa) inserted by paragraph 22 of Schedule 6 to the Local Government (Wales) Act 1994 shall be re-numbered “(ab)”.

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The Town and Country Planning Act 1990 (c 8)

32

(1)–(17) . . .

(18) So much of any provision of this paragraph as amends an enactment repealed by this Act shall cease to have effect with the coming into force of the repeal.

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Water consolidation legislation

34

(1) The references to a National Park authority in the following provisions (which impose environmental duties), that is to say—

- (a) section 4 of the Water Industry Act 1991,
- (b) . . . , and
- (c) section 61C of the Land Drainage Act 1991,

shall have effect, until the coming into force of the repeal by this Act of the definition for the purposes of those provisions of the expression “National Park authority”, as if they included references to a National Park authority established under Part III of this Act which has become the local planning authority for the National Park in question; and thereafter those references shall have effect as if they were references to a National Park authority so established.

(2) The references to a National Park planning authority—

- (a) in sections 34 and 45 of the Water Resources Act 1991 (regulations with respect to notice to be given of particulars of certain licence applications), and
- (b) in any regulations under those sections,

shall have effect, until the coming into force of the repeal by this Act of subsection (5) of section 34 of that Act, as if they included references to a National Park authority established under Part III of this Act which has become the local planning authority for the National Park in question; and thereafter those references shall have effect as if they were references to a National Park authority so established.

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NOTES

Initial Commencement

Royal Assent

Para 22 (in part): Royal Assent: 19 July 1995: see s 125(3).

To be appointed

Paras 1–21, 22 (remainder), 23–38: To be appointed: see s 125(3).

Appointment

Paras 1, 3–7, 9, 11, 12, 14, 15, 17–19, 21, 23–26, 28–31, 34, 36, 37: Appointment: 23 November 1995: see SI 1995/2950, art 2(1).

Paras 2, 8, 10, 33, 38: Appointment (in part): 23 November 1995: see SI 1995/2950, art 2(1).

Paras 2, 8: Appointment (remainder): 1 April 1996: see SI 1995/2950, art 3(1).

Paras 10: Appointment (in part): 1 April 1997: see SI 1996/2560, art 2.

Paras 13, 16, 20: Appointment: 1 April 1996: see SI 1995/2950, art 3(1).

Para 22: Appointment (in part): 1 April 1996: see SI 1995/2950, art 3(1); for savings see art 3(2) thereof.

Paras 22, 33, 38: Appointment (remainder): 1 April 1997: see SI 1996/2560, art 2.

Para 27: Appointment: 1 April 1997: see SI 1996/2560, art 2.

Para 32(1)–(13), (15)–(18): Appointment: 23 November 1995: see SI 1995/2950, art 2(1); for savings in relation to sub-s (2) see art 2(2) thereof.

Para 32(14): Appointment: 1 April 1997: see SI 1996/2560, art 2.

Para 35: Appointment (for certain purposes): 23 November 1995: see SI 1995/2950, art 2(1).

Para 35: Appointment (for remaining purposes): 1 April 1997: see SI 1996/2560, art 2.

Amendment

Para 1: repealed by the Statute Law (Repeals) Act 1998.

Date in force: 19 November 1998: (no specific commencement provision).

Paras 2–15, 17, 18, 21, 23–29, 31–33, 35–38: contain amendments only.

Para 2: repealed in part by the Countryside and Rights of Way Act 2000, s 102, Sch 16, Pt V.

Date in force (in relation to England): 1 April 2001: see SI 2001/114, art 2(2)(i), (m).

Date in force (in relation to Wales): 1 May 2001: see SI 2001/1410, art 2(i), (m).

Para 15: repealed in part by the Race Relations (Amendment) Act 2000, s 9(2), Sch 3.

Date in force: 2 April 2001: see SI 2001/566, art 2(1).

Para 16: repealed by the Government of Wales Act 1998, s 152, Sch 18, Pt IV.

Date in force: 1 October 1998: see SI 1998/2244, art 4.

Para 19: repealed by the Justices of the Peace Act 1997, s 73(3), Sch 6, Pt I.

Para 20: repealed by the Government of Wales Act 1998, s 152, Sch 18, Pt V.

Date in force: 1 October 1998: see SI 1998/2244, art 4.

Para 22: repealed in part by s 120, Sch 24, hereto, remainder amends the Wildlife and Countryside Act 1981, ss 41(5A), 42, 44, 51(2).

Para 31: repealed in part by the Local Government Act 2003, s 127(2), Sch 8, Pt 1.

Date in force (in relation to England): 1 April 2004: see SI 2003/2938, art 7(e)(vi).

Date in force (in relation to Wales): 27 November 2003 (only for the purpose of and in relation to financial years beginning on or after 1 April 2004): see SI 2003/3034, art 2, Sch 1, Pt I.

Para 34: in sub-para (1) words omitted repealed by s 120, Sch 24, hereto.

SCHEDULE 11

AIR QUALITY: SUPPLEMENTAL PROVISIONS

Section 90

Consultation requirements

1

(1) A local authority in carrying out its functions in relation to—

- (a) any air quality review,
- (b) any assessment under section 82 or 84 of this Act, or
- (c) the preparation of an action plan or any revision of an action plan,

shall consult such other persons as fall within sub-paragraph (2) below.

(2) Those persons are—

- (a) the Secretary of State;
- (b) the appropriate new Agency;

- (c) in England and Wales, the highway authority for any highway in the area to which the review or, as the case may be, the action plan or revision relates;
- (d) every local authority whose area is contiguous to the authority's area;
- (e) any county council in England whose area consists of or includes the whole or any part of the authority's area;
- (f) any National Park authority for a National Park whose area consists of or includes the whole or any part of the authority's area;
- (g) such public authorities exercising functions in, or in the vicinity of, the authority's area as the authority may consider appropriate;
- (h) such bodies appearing to the authority to be representative of persons with business interests in the area to which the review or action plan in question relates as the authority may consider appropriate;
- (j) such other bodies or persons as the authority considers appropriate.

[(2A) A local authority specified in sub-paragraph (2B) below shall in carrying out the functions falling within sub-paragraph (1)(a) to (c) above also consult the Mayor of London.

(2B) The local authorities mentioned in sub-paragraph (2A) above are—

- (a) any local authority in Greater London,
- (b) any local authority whose area is contiguous to the area of Greater London.]

(3) [Except in its application to Scotland,] in this paragraph "National Park authority" . . . means a National Park authority established under section 63 of this Act which has become the local planning authority for the National Park in question.

(4) . . .

[(5) In the application of this paragraph to Scotland "National Park authority" means a National Park authority established by virtue of section 7(1)(b) of the National Parks (Scotland) Act 2000 (asp 10).]

Exchange of information with county councils in England

2

(1) This paragraph applies in any case where a district in England for which there is a district council is comprised in an area for which there is a county council; and in this paragraph—

- (a) any reference to the county council is a reference to the council of that area; and
- (b) any reference to a district council is a reference to the council of a district comprised in that area.

(2) It shall be the duty of the county council to provide a district council with all such information as is reasonably requested by the district council for purposes connected with the carrying out of its functions under or by virtue of this Part.

(3) It shall be the duty of a district council to provide the county council with all such information as is reasonably requested by the county council for purposes connected with the carrying out of any of its functions relating to the assessment or management of the quality of air.

(4) Information provided to a district council or county council under sub-paragraph (2) or (3) above shall be provided in such form and in such manner and at such times as the district council or, as the case may be, the county council may reasonably require.

(5) A council which provides information under sub-paragraph (2) or (3) above shall be entitled to recover the reasonable cost of doing so from the council which requested the information.

(6) The information which a council may be required to provide under this paragraph shall include information which, although it is not in the possession of the council or would not otherwise come into the possession of the council, is information which it is reasonable to require the council to obtain.

Joint exercise of local authority functions

3

(1) The appropriate authority may give directions to any two or more local authorities requiring them to exercise the powers conferred by—

- (a) section 101(5) of the Local Government Act 1972 (power of two or more local authorities to discharge functions jointly), or
- (b) section 56(5) of the Local Government (Scotland) Act 1973 (which makes similar provision for Scotland),

in relation to functions under or by virtue of this Part in accordance with the directions.

(2) The appropriate authority may give directions to a local authority requiring it—

- (a) not to exercise those powers, or
- (b) not to exercise those powers in a manner specified in the directions,

in relation to functions under or by virtue of this Part.

(3) Where two or more local authorities have exercised those powers in relation to functions under or by virtue of this Part, the appropriate authority may give them directions requiring them to revoke, or modify in accordance with the directions, the arrangements which they have made.

(4) In this paragraph, “the appropriate authority” means—

- (a) in relation to England and Wales, the Secretary of State; and
- (b) in relation to Scotland, SEPA acting with the approval of the Secretary of State.

Public access to information about air quality

4

(1) It shall be the duty of every local authority—

- (a) to secure that there is available at all reasonable times for inspection by the public free of charge a copy of each of the documents specified in sub-paragraph (2) below; and
- (b) to afford to members of the public facilities for obtaining copies of those documents on payment of a reasonable charge.

(2) The documents mentioned in sub-paragraph (1)(a) above are—

- (a) a report of the results of any air quality review which the authority has caused to be conducted;
- (b) a report of the results of any assessment which the authority has caused to be made under section 82 or 84 of this Act;
- (c) any order made by the authority under section 83 of this Act;
- (d) any action plan prepared by the authority;
- (e) any proposals or statements submitted to the authority pursuant to subsection (3) or (4) of section 86 of this Act;
- (f) any directions given to the authority under this Part;
- (g) in a case where section 86 of this Act applies, any directions given to the county council under this Part.

Fixed penalty offences

5

(1) Without prejudice to the generality of paragraph (o) of subsection (2) of section 87 of this Act, regulations may, in particular, make provision—

- (a) for the qualifications, appointment or authorisation of persons who are to issue fixed penalty notices;
- (b) for the offences in connection with which, the cases or circumstances in which, the time or period at or within which, or the manner in which fixed penalty notices may be issued;
- (c) prohibiting the institution, before the expiration of the period for paying the fixed penalty, of proceedings against a person for an offence in connection with which a fixed penalty notice has been issued;
- (d) prohibiting the conviction of a person for an offence in connection with which a fixed penalty notice has been issued if the fixed penalty is paid before the expiration of the period for paying it;
- (e) entitling, in prescribed cases, a person to whom a fixed penalty notice is issued to give, within a prescribed period, notice requesting a hearing in respect of the offence to which the fixed penalty notice relates;
- (f) for the amount of the fixed penalty to be increased by a prescribed amount in any case where the person liable to pay the fixed penalty fails to pay it before the expiration of the period for paying it, without having given notice requesting a hearing in respect of the offence to which the fixed penalty notice relates;
- (g) for or in connection with the recovery of an unpaid fixed penalty as a fine or as a civil debt or as if it were a sum payable under a county court order;
- (h) for or in connection with execution or other enforcement in respect of an unpaid fixed penalty by prescribed persons;
- (j) for a fixed penalty notice, and any prescribed proceedings or other prescribed steps taken by reference to the notice, to be rendered void in prescribed cases where a person makes a prescribed statutory declaration, and for the consequences of any notice, proceedings or other steps being so rendered void (including extension of any time limit for instituting criminal

- proceedings);
- (k) for or in connection with the extension, in prescribed cases or circumstances, by a prescribed person of the period for paying a fixed penalty;
 - (l) for or in connection with the withdrawal, in prescribed circumstances, of a fixed penalty notice, including—
 - (i) repayment of any amount paid by way of fixed penalty in pursuance of a fixed penalty notice which is withdrawn; and
 - (ii) prohibition of the institution or continuation of proceedings for the offence in connection with which the withdrawn notice was issued;
 - (m) for or in connection with the disposition of sums received by way of fixed penalty;
 - (n) for a certificate purporting to be signed by or on behalf of a prescribed person and stating either—
 - (i) that payment of a fixed penalty was, or (as the case may be) was not, received on or before a date specified in the certificate, or
 - (ii) that an envelope containing an amount sent by post in payment of a fixed penalty was marked as posted on a date specified in the certificate,to be received as evidence of the matters so stated and to be treated, without further proof, as being so signed unless the contrary is shown;
 - (o) requiring a fixed penalty notice to give such reasonable particulars of the circumstances alleged to constitute the fixed penalty offence to which the notice relates as are necessary for giving reasonable information of the offence and to state—
 - (i) the monetary amount of the fixed penalty which may be paid;
 - (ii) the person to whom, and the address at which, the fixed penalty may be paid and any correspondence relating to the fixed penalty notice may be sent;
 - (iii) the method or methods by which payment of the fixed penalty may be made;
 - (iv) the period for paying the fixed penalty;
 - (v) the consequences of the fixed penalty not being paid before the expiration of that period;
 - (p) similar to any provision made by section 79 of the Road Traffic Offenders Act 1988 (statements by constables in fixed penalty cases);
 - (q) for presuming, in any proceedings, that any document of a prescribed description purporting to have been signed by a person to whom a fixed penalty notice has been issued has been signed by that person;
 - (r) requiring or authorising a fixed penalty notice to contain prescribed information relating to, or for the purpose of facilitating, the administration of the fixed penalty system;
 - (s) with respect to the giving of fixed penalty notices, including, in particular, provision with respect to—
 - (i) the methods by which,

- (ii) the officers, servants or agents by, to or on whom, and
- (iii) the places at which,

fixed penalty notices may be given by, or served on behalf of, a prescribed person;

- (t) prescribing the method or methods by which fixed penalties may be paid;
- (u) for or with respect to the issue of prescribed documents to persons to whom fixed penalty notices are or have been given;
- (w) for a fixed penalty notice to be treated for prescribed purposes as if it were an information or summons or any other document of a prescribed description.

(2) The provision that may be made by regulations prescribing fixed penalty offences includes provision for an offence to be a fixed penalty offence—

- (a) only if it is committed in such circumstances or manner as may be prescribed; or
- (b) except if it is committed in such circumstances or manner as may be prescribed.

(3) Regulations may provide for any offence which is a fixed penalty offence to cease to be such an offence.

(4) An offence which, in consequence of regulations made by virtue of sub-paragraph (3) above, has ceased to be a fixed penalty offence shall be eligible to be prescribed as such an offence again.

(5) Regulations may make provision for such exceptions, limitations and conditions as the Secretary of State considers necessary or expedient.

(6) In this paragraph—

“fixed penalty” means a penalty of such amount as may be prescribed (whether by being specified in, or made calculable under, regulations);

“fixed penalty notice” means a notice offering a person an opportunity to discharge any liability to conviction for a fixed penalty offence by payment of a penalty of a prescribed amount;

“fixed penalty offence” means, subject to sub-paragraph (2) above, any offence (whether under or by virtue of this Part or any other enactment) which is for the time being prescribed as a fixed penalty offence;

“the fixed penalty system” means the system implementing regulations made under or by virtue of paragraph (o) of subsection (2) of section 87 of this Act;

“the period for paying”, in relation to any fixed penalty, means such period as may be prescribed for the purpose;

“regulations” means regulations under or by virtue of paragraph (o) of subsection (2) of section 87 of this Act.

[(7) In the definition of “fixed penalty offence” in sub-paragraph (6) above, “enactment” includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament.]

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Paras 1, 4: Appointment: 23 December 1997: see SI 1997/3044, art 2.

Paras 2, 3, 5: Appointment: 1 February 1996: see SI 1996/186, art 2.

Amendment

Para 1: in sub-para (1)(b) words “or 84” in italics repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (8)(a).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Para 1: sub-paras (2A), (2B) inserted by the Greater London Authority Act 1999, s 369.

Date in force: 3 July 2000: see SI 2000/801, art 2(2)(c), Schedule, Pt 3.

Para 1: in sub-para (3) words “Except in its application to Scotland,” in square brackets inserted by the National Parks (Scotland) Act 2000, s 36, Sch 5, para 17(a).

Date in force: 8 September 2000: see the National Parks (Scotland) Act 2000, s 37, and SSI 2000/312, art 2.

Para 1: in sub-para (3) words omitted repealed by s 120, Sch 24, hereto.

Para 1: sub-para (4) repealed by s 120, Sch 24, hereto.

Para 1: sub-para (5) inserted by the National Parks (Scotland) Act 2000, s 36, Sch 5, para 17(b).

Date in force: 8 September 2000: see the National Parks (Scotland) Act 2000, s 37, and SSI 2000/312, art 2.

Para 4: in sub-para (2)(b) words “or 84” in italics repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (8)(b).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Para 5: sub-para (7) inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 6, para 43(1), (14).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

Subordinate Legislation

UK

Road Traffic (Vehicle Emissions) (Fixed Penalty) (Wales) Regulations 2003, SI 2003/300 (made under para 5).

Scotland

Road Traffic (Vehicle Emissions) (Fixed Penalty) (Scotland) Regulations 2003, SSI 2003/212 (made under para 5).

SCHEDULE 12

SCHEDULE 2A TO THE ENVIRONMENTAL PROTECTION ACT 1990

Section 92

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NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

This Schedule inserts the Environmental Protection Act 1990, Sch 2A.

SCHEDULE 13
REVIEW OF OLD MINERAL PLANNING PERMISSIONS

NOTES

Amendment

Repealed, in relation to Scotland only, by the Planning (Consequential Provisions) (Scotland) Act 1997, s 3, Sch 1, Part II.

Section 96

Interpretation

1

(1) *In this Schedule—*

“dormant site” means a Phase I or Phase II site in, on or under which no minerals development has been carried out to any substantial extent at any time in the period beginning on 22nd February 1982 and ending with 6th June 1995 otherwise than by virtue of a planning permission which is not a relevant planning permission relating to the site;

“first list”, in relation to a mineral planning authority, means the list prepared by them pursuant to paragraph 3 below;

“mineral planning authority”—

(a) . . . , means a mineral planning authority within the meaning of the 1990 Act, . . .

“mineral site” has the meaning given by sub-paragraph (2) below;

“National Park” means an area designated as such under section 5(3) of the National Parks and Access to the Countryside Act 1949;

“old mining permission” has the meaning given—

(a) . . . , by section 22(1) of the 1991 Act, . . .

“owner”, in relation to any land—

(a) . . . , means any person who—

(i) is the estate owner in respect of the fee simple, or

(ii) is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remains unexpired; . . .

“Phase I site” and “Phase II site” have the meaning given by paragraph 2 below;

“relevant planning permission” means any planning permission, other than an old mining permission or a planning permission granted by a development order, granted after 30th June 1948 for minerals development; and

“second list”, in relation to a mineral planning authority, means the list prepared by them pursuant to paragraph 4 below.

(2) *For the purposes of this Schedule, but subject to sub-paragraph (3) below, “mineral site” means—*

- (a) *in a case where it appears to the mineral planning authority to be expedient to treat as a single site the aggregate of the land to which any two or more relevant planning permissions relate, the aggregate of the land to which those permissions relate; and*
- (b) *in any other case, the land to which a relevant planning permission relates.*

(3) *In determining whether it appears to them to be expedient to treat as a single site the aggregate of the land to which two or more relevant planning permissions relate a mineral planning authority shall have regard to any guidance issued for the purpose by the Secretary of State.*

(4) *Any reference (however expressed) in this Schedule to an old mining permission or a relevant planning permission relating to a mineral site is a reference to the mineral site, or some part of it, being the land to which the permission relates; and where any such permission authorises the carrying out of development consisting of the winning and working of minerals but only in respect of any particular mineral or minerals, that permission shall not be taken, for the purposes of this Schedule, as relating to any other mineral in, on or under the land to which the permission relates.*

(5) *For the purposes of this Schedule, a mineral site which is a Phase I site or a Phase II site is active if it is not a dormant site.*

(6) *For the purposes of this Schedule, working rights are restricted in respect of a mineral site if any of—*

- (a) *the size of the area which may be used for the winning and working of minerals or the depositing of mineral waste;*
- (b) *the depth to which operations for the winning and working of minerals may extend;*
- (c) *the height of any deposit of mineral waste;*
- (d) *the rate at which any particular mineral may be extracted;*
- (e) *the rate at which any particular mineral waste may be deposited;*
- (f) *the period at the expiry of which any winning or working of minerals or depositing of mineral waste is to cease; or*
- (g) *the total quantity of minerals which may be extracted from, or of mineral waste which may be deposited on, the site,*

is restricted or reduced in respect of the mineral site in question.

(7) *For the purposes of this Schedule, where an application is made under paragraph 9 below for the determination of the conditions to which the relevant planning permissions relating to the mineral site to which the application relates are to be subject, those conditions are finally determined when—*

- (a) *the proceedings on the application, including any proceedings on or in consequence of an application under section 288 of the 1990 Act . . . , have been determined, and*
- (b) *any time for appealing under paragraph 11(1) below, or applying or further applying under paragraph 9 below, (where there is a right to do so) has expired.*

[(8) *Where an electronic communication is used to make an application to a mineral planning authority under any of paragraphs 6, 7 or 9 below, the applicant shall be taken to have agreed—*

- (a) *to the use of electronic communications for all purposes relating to his application which are capable of being effected using such communications, unless he gives notice in writing to the*

mineral planning authority in accordance with sub-paragraph (9) below; and

- (b) that his address for the purposes of such communications is the address incorporated into, or otherwise logically associated with, his application (or such other address as he may notify in writing to the mineral planning authority).

(9) An applicant may give notice that he is no longer to be taken to have agreed to the use of electronic communications for the purposes mentioned in paragraph (a) of sub-paragraph (8).

(10) Any such notice shall take effect from the date specified in it being not less than seven days from the date on which it is given.]

Phase I and II sites

2

(1) *This paragraph has effect for the purposes of determining which mineral sites are Phase I sites, which are Phase II sites, and which are neither Phase I nor Phase II sites.*

(2) *A mineral site is neither a Phase I site nor a Phase II site where—*

- (a) *all the relevant planning permissions which relate to the site have been granted after 21st February 1982; or*
- (b) *some only of the relevant planning permissions which relate to the site have been granted after 21st February 1982, and the parts of the site to which those permissions relate constitute the greater part of that site.*

(3) *With the exception of those mineral sites which, by virtue of sub-paragraph (2) above, are neither Phase I nor Phase II sites, every mineral site is either a Phase I site or a Phase II site.*

(4) *Subject to sub-paragraph (2) above, where any part of a mineral site is situated within—*

- (a) *a National Park;*
- [(b) *a site of special scientific interest (within the meaning of the Wildlife and Countryside Act 1981);] [or]*
- (c) *an area designated under [section 82 of the Countryside and Rights of Way Act 2000];*
- (d), (e) . . .

that site is a Phase I site.

(5) *Subject to sub-paragraphs (2) and (4) above, where—*

- (a) *all the relevant planning permissions which relate to a mineral site, and which were not granted after 21st February 1982, were granted after the relevant day in 1969; or*
- (b) *the parts of a mineral site to which relate such of the relevant planning permissions relating to the site as were granted after the relevant day in 1969 but before 22nd February 1982 constitute a greater part of the site than is constituted by those parts of the site to which no such relevant planning permission relates but to which a relevant planning permission granted on or before the relevant day in 1969 does relate,*

the mineral site is a Phase II site.

(6) In sub-paragraph (5) above, “the relevant day in 1969” means—

(a) . . . , 31st March 1969; . . .

(b) . . .

(7) Every other mineral site, that is to say any mineral site other than one—

(a) which is, by virtue of sub-paragraph (2) above, neither a Phase I nor a Phase II site; or

(b) which is a Phase I site by virtue of sub-paragraph (4) above; or

(c) which is a Phase II site by virtue of sub-paragraph (5) above,

is a Phase I site.

(8) In ascertaining, for the purposes of sub-paragraph (2) or (5) above, whether any parts of a mineral site constitute the greater part of that site, or whether a part of a mineral site is greater than any other part, that mineral site shall be treated as not including any part of the site—

(a) to which an old mining permission relates; or

(b) which is a part where minerals development has been (but is no longer being) carried out and which has, in the opinion of the mineral planning authority, been satisfactorily restored;

but no part of a site shall be treated, by virtue of paragraph (b) above, as being not included in the site unless the mineral planning authority are satisfied that any aftercare conditions which relate to that part have, so far as relating to that part, been complied with.

The “first list”

3

(1) A mineral planning authority shall, in accordance with the following provisions of this paragraph, prepare a list of mineral sites in their area (“the first list”).

(2) A site shall, but shall only, be included in the first list if it is a mineral site in the area of the mineral planning authority and is either—

(a) an active Phase I site;

(b) an active Phase II site; or

(c) a dormant site.

(3) In respect of each site included in the first list, the list shall indicate whether the site is an active Phase I site, an active Phase II site or a dormant site.

(4) In respect of each active Phase I site included in the first list, that list shall specify the date by which an application is to be made to the mineral planning authority under paragraph 9 below.

(5) Any date specified pursuant to sub-paragraph (4) above shall be a date—

(a) not earlier than the date upon which expires the period of 12 months from the date on which the first list is first advertised in accordance with paragraph 5 below, and

(b) not later than the date upon which expires the period of three years from the date upon which

the provisions of this Schedule come into force.

(6) *The preparation of the first list shall be completed before the day upon which it is first advertised in accordance with paragraph 5 below.*

The "second list"

4

(1) *A mineral planning authority shall, in accordance with the following provisions of this paragraph, prepare a list of the active Phase II sites in their area ("the second list").*

(2) *The second list shall include each mineral site in the mineral planning authority's area which is an active Phase II site.*

(3) *In respect of each site included in the second list, that list shall indicate the date by which an application is to be made to the mineral planning authority under paragraph 9 below.*

(4) *Subject to paragraph (5) below, any date specified pursuant to sub-paragraph (3) above shall be a date—*

(a) *not earlier than the date upon which expires the period of 12 months from the date on which the second list is first advertised in accordance with paragraph 5 below, and*

(b) *not later than the date upon which expires the period of six years from the date upon which the provisions of this Schedule come into force.*

(5) *The Secretary of State may by order provide that sub-paragraph (4)(b) above shall have effect as if for the period of six years referred to in that paragraph there were substituted such longer period specified in the order.*

(6) *The power of the Secretary of State to make an order under sub-paragraph (5) above shall be exercisable by statutory instrument; and any statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.*

(7) *The preparation of the second list shall be completed before the day upon which it is first advertised in accordance with paragraph 5 below.*

Advertisement of the first and second lists

5

(1) *This paragraph makes provision for the advertisement of the first and second lists prepared by a mineral planning authority.*

(2) *The mineral planning authority shall advertise each of the first and second lists by causing to be published, in each of two successive weeks, in one or more newspapers circulating in its area, notice of the list having been prepared.*

(3) *In respect of each of those lists, such notice shall—*

(a) *state that the list has been prepared by the authority; and*

(b) *specify one or more places within the area of the authority at which the list may be inspected, and in respect of each such place specify the times (which shall be reasonable times) during which facilities for inspection of the list will be afforded.*

- (4) *In respect of the first list, such notice shall—*
- (a) *be first published no later than the day upon which expires the period of three months from the date upon which the provisions of this Schedule come into force;*
 - (b) *explain the general effect of a mineral site being classified as a dormant site or, as the case may be, as an active Phase I site or an active Phase II site;*
 - (c) *explain the consequences which will occur if no application is made under paragraph 9 below in respect of an active Phase I site included in the list by the date specified in the list for that site;*
 - (d) *explain the effects for any dormant or active Phase I or II site not included in the list of its not being included in the list and—*
 - (i) *set out the right to make an application to the authority for that site to be included in the list;*
 - (ii) *set out the date by which such an application must be made; and*
 - (iii) *state that the owner of such a site has a right of appeal against any decision of the authority upon such an application; and*
 - (e) *explain that the owner of an active Phase I site has a right to apply for postponement of the date specified in the list for the making of an application under paragraph 9 below, and set out the date by which an application for such postponement must be made.*
- (5) *In respect of the second list, such notice shall—*
- (a) *be first published no later than the day upon which expires the period of three years, or such longer period as the Secretary of State may by order specify, from the date upon which the provisions of this Schedule come into force; and*
 - (b) *explain the consequences which will occur if no application is made under paragraph 9 below in respect of an active Phase II site included in the list by the date specified in the list for that site.*
- (6) *The power of the Secretary of State to make an order under sub-paragraph (5) above shall be exercisable by statutory instrument; and any statutory instrument containing such an order shall be subject to annulment in pursuance of a resolution of either House of Parliament.*

Applications for inclusion in the first list of sites not included in that list as originally prepared and appeals from decisions upon such applications

6

- (1) *Any person who is the owner of any land, or is entitled to an interest in a mineral, may, if that land or interest is not a mineral site included in the first list and does not form part of any mineral site included in that list, apply to the mineral planning authority for that land or interest to be included in that list.*
- (2) *An application under sub-paragraph (1) above shall be made no later than the day upon which expires the period of three months from the day when the first list was first advertised in accordance with paragraph 5 above.*
- (3) *Where the mineral planning authority consider that—*
- (a) *the land or interest is, or forms part of, any dormant or active Phase I or II site, they shall*

accede to the application; or

- (b) part only of the land or interest is, or forms part of, any dormant or active Phase I or II site, they shall accede to the application so far as it relates to that part of the land or interest,*

but shall otherwise refuse the application.

(4) On acceding, whether in whole or in part, to an application made under sub-paragraph (1) above, the mineral planning authority shall amend the first list as follows—

- (a) where they consider that the land or interest, or any part of the land or interest, is a dormant site or an active Phase I or II site, they shall add the mineral site consisting of the land or interest or, as the case may be, that part, to the first list and shall cause the list to indicate whether the site is an active Phase I site, an active Phase II site or a dormant site;*
- (b) where they consider that the land or interest, or any part of the land or interest, forms part of any mineral site included in the first list, they shall amend the entry in the first list for that site accordingly.*

(5) Where the mineral planning authority amend the first list in accordance with sub-paragraph (4) above, they shall also—

- (a) in a case where an active Phase I site is added to the first list pursuant to paragraph (a) of that sub-paragraph, cause that list to specify, in respect of that site, the date by which an application is to be made to the mineral planning authority under paragraph 9 below;*

(b) in a case where—

(i) the entry for an active Phase I site included in the first list is amended pursuant to paragraph (b) of that sub-paragraph; and

(ii) the date specified in that list in respect of that site as the date by which an application is to be made to the mineral planning authority under paragraph 9 below is a date falling less than 12 months after the date upon which the authority make their decision upon the application in question,

cause that date to be amended so as to specify instead the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) below of the authority's decision upon his application.

(6) Any date specified pursuant to sub-paragraph (5)(a) above shall be a date—

- (a) not earlier than the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) below of the mineral planning authority's decision upon his application, and*

(b) not later than the later of—

(i) the date upon which expires the period of three years from the date upon which the provisions of this Schedule come into force; and

(ii) the date mentioned in paragraph (a) above.

(7) On acceding, whether in whole or in part, to an application made under sub-paragraph (1) above, the mineral planning authority shall, if the second list has been first advertised in accordance with paragraph 5 above prior to the time at which they make their decision on the application, amend the second list as follows—

- (a) *where they consider that the land or interest, or any part of the land or interest, is an active Phase II site, they shall add the mineral site consisting of the land or interest or, as the case may be, that part, to the second list;*
 - (b) *where they consider that the land or interest, or any part of the land or interest, forms part of any active Phase II site included in the second list, they shall amend the entry in that list for that site accordingly.*
- (8) *Where the mineral planning authority amend the second list in accordance with sub-paragraph (7) above, they shall also—*
- (a) *in a case where an active Phase II site is added to the second list pursuant to paragraph (a) of that sub-paragraph, cause that list to specify, in respect of that site, the date by which an application is to be made to the authority under paragraph 9 below;*
 - (b) *in a case where—*
 - (i) *the entry for an active Phase II site included in the second list is amended pursuant to paragraph (b) of that sub-paragraph; and*
 - (ii) *the date specified in that list in respect of that site as the date by which an application is to be made to the authority under paragraph 9 below is a date falling less than 12 months after the date upon which the authority make their decision upon the application in question,*

cause that date to be amended so as to specify instead the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) below of the authority's decision upon his application.
- (9) *Any date specified pursuant to sub-paragraph (8)(a) above shall be a date—*
- (a) *not earlier than the date upon which expires the period of 12 months from the date on which the applicant is notified under sub-paragraph (10) below of the mineral planning authority's decision upon his application, and*
 - (b) *not later than the later of—*
 - (i) *the date upon which expires the period of six years from the date upon which the provisions of this Schedule come into force; and*
 - (ii) *the date mentioned in paragraph (a) above.*
- (10) *When a mineral planning authority determine an application made under sub-paragraph (1) above, they shall notify the applicant in writing of their decision and, in a case where they have acceded to the application, whether in whole or in part, shall supply the applicant with details of any amendment to be made to the first or second list in accordance with sub-paragraph (4) or (8) above.*
- (11) *Where a mineral planning authority—*
- (a) *refuse an application made under sub-paragraph (1) above; or*
 - (b) *accede to such an application only so far as it relates to part of the land or interest in respect of which it was made,*
- the applicant may by notice appeal to the Secretary of State.*
- (12) *A person who has made such an application may also appeal to the Secretary of State if the*

mineral planning authority have not given notice to the applicant of their decision on the application within eight weeks of their having received the application or within such extended period as may at any time be agreed upon in writing between the applicant and the authority.

(13) An appeal under sub-paragraph (11) or (12) above must be made by giving notice of appeal to the Secretary of State before the end of the period of six months beginning with—

- (a) in the case of an appeal under sub-paragraph (11) above, the determination; or*
- (b) in the case of an appeal under sub-paragraph (12) above, the end of the period of eight weeks mentioned in that sub-paragraph or, as the case may be, the end of the extended period mentioned in that sub-paragraph.*

Postponement of the date specified in the first or second list for review of the permissions relating to a Phase I or II site in cases where the existing conditions are satisfactory

7

(1) Any person who is the owner of any land, or of any interest in any mineral, comprised in—

- (a) an active Phase I site included in the first list; or*
- (b) an active Phase II site included in the second list,*

may apply to the mineral planning authority for the postponement of the date specified in that list in respect of that site as the date by which an application is to be made to the authority under paragraph 9 below (in this paragraph referred to as “the specified date”).

(2) Subject to sub-paragraph (3) below, an application under sub-paragraph (1) above shall be made no later than the day upon which expires the period of three months from the day when—

- (a) in the case of an active Phase I site, the first list; or*
- (b) in the case of an active Phase II site, the second list,*

was first advertised in accordance with paragraph 5 above.

(3) In the case of—

- (a) an active Phase I site—*
 - (i) added to the first list in accordance with paragraph 6(4)(a) above; or*
 - (ii) in respect of which the entry in the first list was amended in accordance with paragraph 6(4)(b) above;*

or

- (b) an active Phase II site—*
 - (i) added to the second list in accordance with paragraph 6(7)(a) above; or*
 - (ii) in respect of which the entry in the second list was amended in accordance with paragraph 6(7)(b) above,*

an application under sub-paragraph (1) above shall be made no later than the day upon which expires the period of three months from the day on which notice was given under paragraph 6(10) above of the mineral planning authority’s decision to add the site to or, as the case may be, so to amend the list in

question.

- (4) An application under sub-paragraph (1) above shall be in writing and shall—
- (a) set out the conditions to which each relevant planning permission relating to the site is subject;
 - (b) set out the applicant's reasons for considering those conditions to be satisfactory;
 - (c) set out the date which the applicant wishes to be substituted for the specified date; and
 - (d) be accompanied by the appropriate certificate (within the meaning of sub-paragraph (5) . . . below).
- (5) For the purposes of sub-paragraph (4) above, . . . the appropriate certificate is such a certificate—
- (a) as would be required, under section 65 of the 1990 Act (notice etc of applications for planning permission) and any provision of a development order made by virtue of that section, to accompany the application if it were an application for planning permission for minerals development, but
 - (b) with such modifications as are required for the purposes of this paragraph,

and section 65(6) of that Act (offences) shall also have effect in relation to any certificate purporting to be the appropriate certificate.

(6) . . .

- (7) Where the mineral planning authority receive an application made under sub-paragraph (1) above—
- (a) if they consider the conditions referred to in sub-paragraph (4)(a) above to be satisfactory they shall agree to the specified date being postponed in which event they shall determine the date to be substituted for that date;
 - (b) in any other case they shall refuse the application.

(8) Where the mineral planning authority agree to the specified date being postponed they shall cause the first or, as the case may be, the second list to be amended accordingly.

(9) When a mineral planning authority determine an application made under sub-paragraph (1) above, they shall notify the applicant in writing of their decision and, in a case where they have agreed to the postponement of the specified date, shall notify the applicant of the date which they have determined should be substituted for the specified date.

(10) Where, within three months of the mineral planning authority having received an application under sub-paragraph (1) above, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority have not given notice, under sub-paragraph (9) above, to the applicant of their decision upon the application, the authority shall be treated as—

- (a) having agreed to the specified date being postponed; and
- (b) having determined that the date referred to in sub-paragraph (4)(c) above be substituted for the specified date,

and sub-paragraph (8) above shall apply accordingly.

8

(1) The mineral planning authority shall, no later than the date upon which the first list is first advertised in accordance with paragraph 5 above, serve notice in writing of the first list having been prepared on each person appearing to them to be the owner of any land, or entitled to an interest in any mineral, included within a mineral site included in the first list, but this sub-paragraph is subject to sub-paragraph (7) below.

(2) A notice required to be served by sub-paragraph (1) above shall—

(a) indicate whether the mineral site in question is a dormant site or an active Phase I or II site; and

(b) where that site is an active Phase I site—

(i) indicate the date specified in the first list in relation to that site as the date by which an application is to be made to the mineral planning authority under paragraph 9 below;

(ii) explain the consequences which will occur if such an application is not made by the date so specified; and

(iii) explain the right to apply to have that date postponed, and indicate the date by which such an application must be made.

(3) Where, in relation to any land or mineral included in an active Phase I site, the mineral planning authority—

(a) has served notice on any person under sub-paragraph (1) above; and

(b) has received no application under paragraph 9 below from that person by the date falling eight weeks before the date specified in the first list as the date by which such applications should be made in respect of the site in question,

the authority shall serve a written reminder on that person, and such a reminder shall—

(i) indicate that the land or mineral in question is included in an active Phase I site;

(ii) comply with the requirements of sub-paragraph (2)(b)(i) and (ii) above; and

(iii) be served on that person on or before the date falling four weeks before the date specified in the first list in respect of that site as the date by which an application is to be made to the authority under paragraph 9 below.

(4) The mineral planning authority shall, no later than the date upon which the second list is first advertised in accordance with paragraph 5 above, serve notice in writing of the second list having been prepared on each person appearing to them to be the owner of any land, or entitled to an interest in any mineral, included within an active Phase II site included in the second list, but this sub-paragraph is subject to sub-paragraph (7) below.

(5) A notice required to be served by sub-paragraph (4) above shall—

(a) indicate that the mineral site in question is an active Phase II site; and

- (b) *indicate the date specified in the second list in relation to that site as the date by which an application is to be made to the mineral planning authority under paragraph 9 below;*
- (c) *explain the consequences which will occur if such an application is not made by the date so specified; and*
- (d) *explain the right to apply to have that date postponed, and indicate the date by which such an application must be made.*

(6) *Where, in relation to any land or mineral included in an active Phase II site, the mineral planning authority—*

- (a) *has served notice on any person under sub-paragraph (4) above; and*
- (b) *has received no application under paragraph 9 below from that person by the date falling eight weeks before the date specified in the second list as the date by which such applications should be made in respect of the site in question,*

the authority shall serve a written reminder on that person, and such a reminder shall—

- (i) *comply with the requirements of sub-paragraph (5)(a) to (c) above; and*
- (ii) *be served on that person on or before the date falling four weeks before the date specified in the second list in respect of that site as the date by which an application is to be made to the authority under paragraph 9 below.*

(7) *Sub-paragraph (1) or (4) above shall not require the mineral planning authority to serve notice under that sub-paragraph upon any person whose identity or address for service is not known to and cannot practicably, after reasonable inquiry, be ascertained by them, but in any such case the authority shall cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the notice which they would (apart from the provisions of this sub-paragraph) have had to serve under that sub-paragraph on the owner of that land or interest.*

(8) *If, in a case where sub-paragraph (7) above applies, no person makes an application to the authority under paragraph 9 below in respect of the active Phase I or II site which includes the land or interest in question by the date falling eight weeks before the date specified in the first or, as the case may be, the second list as the date by which such applications should be made in respect of that site, the authority shall cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the written reminder that would, in a case not falling within sub-paragraph (7) above, have been served under sub-paragraph (3) or (6) above.*

(9) *Where by sub-paragraph (7) or (8) above a copy of any notice is required to be affixed to an object on any land that copy shall—*

- (a) *be displayed in such a way as to be easily visible and legible;*
- (b) *be first displayed—*
 - (i) *in a case where the requirement arises under sub-paragraph (7) above, no later than the date upon which the first or, as the case may be, the second list is first advertised in accordance with paragraph 5 above; or*
 - (ii) *in a case where the requirement arises under sub-paragraph (8) above, no later than the date falling four weeks before the date specified in the first or, as the case may be, the second list in respect of the site in question as the date by which an*

application is to be made to the authority under paragraph 9 below; and

- (c) *be left in position for at least the period of 21 days from the date when it is first displayed, but where the notice is, without fault or intention of the authority, removed, obscured or defaced before that period has elapsed, that requirement shall be treated as having been complied with if the authority has taken reasonable steps for protection of the notice and, if need be, its replacement.*

(10) *In sub-paragraphs (7) and (8) above, any reference to a conspicuous object on any land includes, in a case where the person serving a notice considers that there are no or insufficient such objects on the land, a reference to a post driven into or erected upon the land by the person serving the notice for the purpose of having affixed to it the notice in question.*

(11) *Where the mineral planning authority, being required—*

- (a) *by sub-paragraph (3) or (6) above to serve a written reminder on any person; or*
- (b) *by sub-paragraph (8) above to cause a copy of such a reminder to be displayed in the manner set out in that sub-paragraph,*

fail to comply with that requirement by the date specified for the purpose, they may at any later time serve or, as the case may be, cause to be displayed, such a written reminder and, in any such case, the date by which an application in relation to the mineral site in question is to be made under paragraph 9 below is the date upon which expires the period of three months from the date when the reminder was served or posted in accordance with the provisions of this sub-paragraph.

Applications for approval of conditions and appeals in cases where the conditions approved are not those proposed

9

(1) *Any person who is the owner of any land, or who is entitled to an interest in a mineral, may, if that land or mineral is or forms part of a dormant site or an active Phase I or II site, apply to the mineral planning authority to determine the conditions to which the relevant planning permissions relating to that site are to be subject.*

(2) *An application under this paragraph shall be in writing and shall—*

- (a) *identify the mineral site to which the application relates;*
- (b) *specify the land or minerals comprised in the site of which the applicant is the owner or, as the case may be, in which the applicant is entitled to an interest;*
- (c) *identify any relevant planning permissions relating to the site;*
- (d) *identify, and give [a postal address] for, each other person that the applicant knows or, after reasonable inquiry, has cause to believe to be an owner of any land, or entitled to any interest in any mineral, comprised in the site;*
- (e) *set out the conditions to which the applicant proposes the permissions referred to in paragraph (c) above should be subject; and*
- (f) *be accompanied by the appropriate certificate (within the meaning of sub-paragraph (3) . . . below).*

(3) *For the purposes of sub-paragraph (2) above, . . . the appropriate certificate is such a certificate—*

- (a) *as would be required, under section 65 of the 1990 Act (notice etc of applications for planning permission) and any provision of a development order made by virtue of that section, to accompany the application if it were an application for planning permission for minerals development, but*
- (b) *with such modifications as are required for the purposes of this paragraph,*

and section 65(6) of that Act (offences) shall also have effect in relation to any certificate purporting to be the appropriate certificate.

(4) . . .

(5) *Section 65 of the 1990 Act . . . (by virtue of which a development order may provide for publicising applications for planning permission) shall have effect, with any necessary modifications, as if subsection (1) of that section also authorised a development order to provide for publicising applications under this paragraph.*

(6) *Where the mineral planning authority receive an application under this paragraph in relation to a dormant site or an active Phase I or II site they shall determine the conditions to which each relevant planning permission relating to the site is to be subject; and any such permission shall, from the date when the conditions to which it is to be subject are finally determined, have effect subject to the conditions which are determined under this Schedule as being the conditions to which it is to be subject.*

(7) *The conditions imposed by virtue of a determination under sub-paragraph (6) above—*

- (a) *may include any conditions which may be imposed on a grant of planning permission for minerals development;*
- (b) *may be in addition to, or in substitution for, any existing conditions to which the permission in question is subject.*

(8) *In determining that a relevant planning permission is to be subject to any condition relating to development for which planning permission is granted by a development order, the mineral planning authority shall have regard to any guidance issued for the purpose by the Secretary of State.*

(9) *Subject to sub-paragraph (10) below, where, within the period of three months from the mineral planning authority having received an application under this paragraph, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority have not given notice to the applicant of their decision upon the application, the authority shall be treated as having at the end of that period or, as the case may be, that extended period, determined that the conditions to which any relevant planning permission to which the application relates is to be subject are those specified in the application as being proposed in relation to that permission; and any such permission shall, from that time, have effect subject to those conditions.*

(10) *Where a mineral planning authority, having received an application under this paragraph, are of the opinion that they are unable to determine the application unless further details are supplied to them, they shall within the period of one month from having received the application give notice to the applicant—*

- (a) *stating that they are of such opinion; and*
- (b) *specifying the further details which they require,*

and where the authority so serve such a notice the period of three months referred to in sub-paragraph (9) above shall run not from the authority having received the application but from the time when the authority have received all the further details specified in the notice.

(11) Without prejudice to the generality of sub-paragraph (10) above, the further details which may be specified in a notice under that sub-paragraph include any—

- (a) information, plans or drawings; or
- (b) evidence verifying any particulars of details supplied to the authority in respect of the application in question,

which it is reasonable for the authority to request for the purpose of enabling them to determine the application.

Notice of determination of conditions to be accompanied by additional information in certain cases

10

(1) This paragraph applies in a case where—

- (a) on an application made to the mineral planning authority under paragraph 9 above in respect of an active Phase I or II site the authority determine under that paragraph the conditions to which the relevant planning permissions relating to the site are to be subject;
- (b) those conditions differ in any respect from the proposed conditions set out in the application; and
- (c) the effect of the conditions, other than any restoration or aftercare conditions, so determined by the authority, as compared with the effect of the conditions, other than any restoration or aftercare conditions, to which the relevant planning permissions in question were subject immediately prior to the authority making the determination, is to restrict working rights in respect of the site.

(2) In a case where this paragraph applies, the mineral planning authority shall, upon giving to the applicant notice of the conditions determined by the authority under paragraph 9 above, also give to the applicant notice—

- (a) stating that the conditions determined by the authority differ in some respect from the proposed conditions set out in the application;
- (b) stating that the effect of the conditions, other than any restoration or aftercare conditions, determined by the authority, as compared with the effect of the conditions, other than any restoration or aftercare conditions, to which the relevant planning permissions relating to the site in question were subject immediately prior to the making of the authority's determination, is to restrict working rights in respect of the site;
- (c) identifying the working rights so restricted; and
- (d) stating whether, in the opinion of the authority, the effect of that restriction of working rights would be such as to prejudice adversely to an unreasonable degree—
 - (i) the economic viability of operating the site; or
 - (ii) the asset value of the site.

(3) In determining whether, in their opinion, the effect of that restriction of working rights would be such as is mentioned in sub-paragraph (2)(d) above, a mineral planning authority shall have regard to any guidance issued for the purpose by the Secretary of State.

(4) In this paragraph, "the applicant" means the person who made the application in question under

paragraph 9 above.

Right to appeal against mineral planning authority's determination of conditions etc

11

(1) *Where the mineral planning authority—*

- (a) *on an application under paragraph 9 above determine under that paragraph conditions that differ in any respect from the proposed conditions set out in the application; or*
- (b) *give notice, under paragraph (d) of paragraph 10(2) above, stating that, in their opinion, the restriction of working rights in question would not be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of the said paragraph (d),*

the person who made the application may appeal to the Secretary of State.

(2) *An appeal under sub-paragraph (1) above must be made by giving notice of appeal to the Secretary of State before the end of the period of six months beginning with the date on which the authority give notice to the applicant of their determination or, as the case may be, stating their opinion.*

Permissions ceasing to have effect

12

(1) *Subject to paragraph 8(11) above, where no application under paragraph 9 above in respect of an active Phase I or II site has been served on the mineral planning authority by the date specified in the first or, as the case may be, the second list as the date by which applications under that paragraph in respect of that site are to be made, or by such later date as may at any time be agreed upon in writing between the applicant and the authority, each relevant planning permission relating to the site shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the last date on which such an application may be made.*

(2) *The reference in sub-paragraph (1) above to the date specified in the first or, as the case may be, the second list as the date by which applications under paragraph 9 above are to be made in respect of any Phase I or II site is a reference to the date specified for that purpose in respect of that site in that list as prepared by the mineral planning authority or, where that date has been varied by virtue of any provision of this Schedule, to that date as so varied.*

(3) *Subject to sub-paragraph (4) below, no relevant planning permission which relates to a dormant site shall have effect to authorise the carrying out of minerals development unless—*

- (a) *an application has been made under paragraph 9 above in respect of that site; and*
- (b) *that permission has effect in accordance with sub-paragraph (6) of that paragraph.*

(4) *A relevant planning permission which relates to a Phase I or II site not included in the first list shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the last date on which an application under sub-paragraph (1) of paragraph 6 above may be made in respect of that site unless an application has been made under that sub-paragraph by that date in which event, unless the site is added to that list, such a permission shall cease to have effect when the following conditions are met—*

- (a) *the proceedings on that application, including any proceedings on or in consequence of the application under section 288 of the 1990 Act . . ., have been determined, and*

- (b) *any time for appealing under paragraph 6(11) or (12) above, or applying or further applying under paragraph 6(1) above, (where there is a right to do so) has expired.*

Reference of applications to the Secretary of State

13

(1) *The Secretary of State may give directions requiring applications under paragraph 9 above to any mineral planning authority to be referred to him for determination instead of being dealt with by the authority.*

(2) *Any such direction may relate either to a particular application or to applications of a class specified in the direction.*

(3) *Where an application is referred to the Secretary of State in accordance with such a direction—*

(a) *subject to paragraph (b) below, the following provisions of this Schedule—*

(i) *paragraph 9(6) and (7),*

(ii) *paragraph 10, and*

(iii) *paragraph 14 so far as relating to applications under paragraph 9 above,*

shall apply, with any necessary modifications, as they apply to applications which fall to be determined by the mineral planning authority;

(b) *before determining the application the Secretary of State must, if either the applicant or the mineral planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose; and*

(c) *the decision of the Secretary of State on the application shall be final.*

Two or more applicants

14

(1) *Where a mineral planning authority has received from any person a duly made application under paragraph 7(1) or 9 above—*

(a) *that person may not make any further application under the paragraph in question in respect of the same site; and*

(b) *if the application has been determined, whether or not in the case of an application under paragraph 9 above it has been finally determined, no other person may make an application under the paragraph in question in respect of the same site.*

(2) *Where—*

(a) *a mineral planning authority has received from any person in respect of a mineral site a duly made application under paragraph 7(1) or 9 above; and*

(b) *the authority receives from another person a duly made application under the paragraph in question in respect of the same site,*

then for the purpose of the determination of the applications and any appeal against such a determination, this Schedule shall have effect as if the applications were a single application received by the authority on

the date on which the later application was received by the authority and references to the applicant shall be read as references to either or any of the applicants.

Compensation

15

- (1) *This paragraph applies in a case where—*
- (a) *an application made under paragraph 9 above in respect of an active Phase I or II site is finally determined; and*
 - (b) *the requirements of either sub-paragraph (2) or (3) below are satisfied.*
- (2) *The requirements, referred to in sub-paragraph (1)(b) above, of this sub-paragraph are—*
- (a) *that the conditions to which the relevant planning permissions relating to the site are to be subject were determined by the mineral planning authority;*
 - (b) *no appeal was made under paragraph 11(1)(a) above in respect of that determination or any such appeal was withdrawn or dismissed; and*
 - (c) *the authority gave notice under paragraph (d) of paragraph 10(2) above and either—*
 - (i) *that notice stated that, in the authority's opinion, the restriction of working rights in question would be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of the said paragraph (d); or*
 - (ii) *that notice stated that, in the authority's opinion, the restriction in question would not be such as would so prejudice either of those matters but an appeal under paragraph 11(1) above in respect of the giving of the notice has been allowed.*
- (3) *The requirements, referred to in sub-paragraph (1)(b) above, of this sub-paragraph are that the conditions to which the relevant planning permissions are to be subject were determined by the Secretary of State (whether upon an appeal under paragraph 11(1)(a) above or upon a reference under paragraph 13 above) and—*
- (a) *in a case where those conditions were determined upon an appeal under paragraph 11(1)(a) above either—*
 - (i) *the mineral planning authority gave notice under paragraph (d) of paragraph 10(2) above stating that, in their opinion, the restriction of working rights in question would be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-paragraphs (i) and (ii) of the said paragraph (d), or*
 - (ii) *the authority gave a notice under the said paragraph (d) stating that, in their opinion, the restriction in question would not be such as would so prejudice either of those matters but an appeal under paragraph 11(1)(b) above in respect of the giving of that notice has been allowed;*
- or*
- (b) *in a case where those conditions were determined upon a reference under paragraph 13 above, the Secretary of State gave notice under paragraph (d) of paragraph 10(2) above stating that, in his opinion, the restriction of working rights in question would be such as to prejudice adversely to an unreasonable degree either of the matters referred to in sub-*

paragraphs (i) and (ii) of the said paragraph (d).

(4) *In a case to which this paragraph applies—*

(a) *. . . , Parts IV and XI of the 1990 Act, . . .*

shall have effect as if an order made under section 97 of the 1990 Act . . . , had been confirmed by the Secretary of State under section 98 of the 1990 Act . . . at the time when the application in question was finally determined and, as so confirmed, had effect to modify those permissions to the extent specified in sub-paragraph (5) below.

(5) *For the purposes of sub-paragraph (4) above, the order which is treated by virtue of that sub-paragraph as having been made under section 97 of the 1990 Act . . . is one whose only effect adverse to the interests of any person having an interest in the land or minerals comprised in the mineral site is to restrict working rights in respect of the site to the same extent as the relevant restriction.*

(6) *For the purposes of section 116 of the 1990 Act . . . and of any regulations made under [that section], the permissions treated as being modified by the order mentioned in sub-paragraph (4) above shall be treated as if they were planning permissions for development which neither consists of nor includes any minerals development.*

Appeals: general procedural provisions

16

(1) *This paragraph applies to appeals under any of the following provisions of this Schedule—*

(a) *paragraph 6(11) or (12) above; or*

(b) *paragraph 11(1) above.*

(2) *Notice of appeal in respect of an appeal to which this paragraph applies shall be given on a form supplied by or on behalf of the Secretary of State for use for that purpose, and giving, so far as reasonably practicable, the information required by that form.*

(3) *Paragraph 6 of Schedule 2 to the 1991 Act (determination of appeals) shall, . . . , apply to an appeal to which this paragraph applies as it applies to an appeal under paragraph 5 of that Schedule.*

(4) *. . . , sections 284 to 288 of the 1990 Act (validity of certain decisions and proceedings for questioning their validity) shall have effect as if the action mentioned in section 284(3) of that Act included any decision of the Secretary of State*

(a) *on an appeal to which this paragraph applies; or*

(b) *on an application under paragraph 9 above referred to him under paragraph 13 above.*

(5)–(7) . . .

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment (in relation to England and Wales): 1 November 1995: see SI 1995/2765, art 2.

Appointment (in relation to Scotland): 1 January 1997: see SI 1996/2857, art 2.

Amendment

Repealed, in relation to Scotland only, by the Planning (Consequential Provisions) (Scotland) Act 1997, s 3, Sch 1, Part II.

Paras 1, 7, 9, 12, 16: words omitted repealed, in relation to England and Wales, by the Planning (Consequential Provisions) (Scotland) Act 1997, s 3, Sch 1, Part III.

Para 1: sub-paras (8)–(10) inserted in relation to England by SI 2003/956, art 10(1), (2)(a) and in relation to Wales by SI 2004/3156, art 10(1), (2)(a).

Date in force (in relation to England): 31 March 2003: see SI 2003/956, art 1(1).

Date in force (in relation to Wales): 1 January 2005: see SI 2004/3156, art 1(1).

Para 2: sub-para (4)(b) substituted by the Countryside and Rights of Way Act 2000, s 76(1), Sch 10, Pt II, para 10.

Date in force: 30 January 2001: see the Countryside and Rights of Way Act 2000, s 103(2).

Para 2: in sub-para (4) word “or” in square brackets inserted by the Planning (Consequential Provisions) (Scotland) Act 1997, s 4, Sch 2, para 60(1)(a).

Para 2: in sub-para (4)(c) words “section 82 of the Countryside and Rights of Way Act 2000” in square brackets substituted by the Countryside and Rights of Way Act 2000, s 93, Sch 15, Pt I, para 13.

Date in force (in relation to England): 1 April 2001: see SI 2001/114, art 2(2)(e).

Date in force (in relation to Wales): 1 May 2001: see SI 2001/1410, art 2(g).

Para 2: sub-para (4)(d), (e) repealed by the Planning (Consequential Provisions) (Scotland) Act 1997, s 3(1), Sch 1, Pt III.

Para 2: in sub-para (6) words omitted repealed by the Planning (Consequential Provisions) (Scotland) Act 1997, s 3(1), Sch 1, Pt III.

Para 9: in sub-para (2)(d) words “a postal address” in square brackets substituted in relation to England by SI 2003/956, art 10(1), (2)(b) and in relation to Wales by SI 2004/3156, art 10(1), (2)(b).

Date in force (in relation to England): 31 March 2003: see SI 2003/956, art 1(1).

Date in force (in relation to Wales): 1 January 2005: see SI 2004/3156, art 1(1).

Para 15: words omitted repealed and in sub-para (6) words in square brackets substituted, by the Planning (Consequential Provisions) (Scotland) Act 1997, ss 3, 4, Sch 1, Part III, Sch 2, para 60(1)(b).

See Further

See further, in relation to Wales, the disapplication of para 9(9) above to an undetermined ROMP application in specified circumstances: the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009, SI 2009/3342, reg 42.

See further, in relation to Wales, the application of para 11 above, with modifications, where the relevant mineral planning authority has not given written notice of its determination in accordance with SI 2009/3342, reg 44: the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009, SI 2009/3342, reg 45.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

SCHEDULE 14

PERIODIC REVIEW OF MINERAL PLANNING PERMISSIONS

NOTES

Amendment

Repealed, in relation to Scotland only, by the Planning (Consequential Provisions) (Scotland) Act 1997, s 3, Sch 1, Part II.

[Power to carry out periodic reviews

A1

The mineral planning authority for an area in England may, in accordance with the provisions of this Schedule, cause one or more periodic reviews to be carried out of the mineral permissions relating to a mining site.]

Duty to carry out periodic reviews

1

The mineral planning authority [for an area in Wales] shall, in accordance with the provisions of this Schedule, cause periodic reviews to be carried out of the mineral permissions relating to a mining site.

Interpretation

2

(1) *For the purposes of this Schedule—*

["first review date"—

(a) *in relation to a mineral planning authority for an area in England, has the meaning given by paragraph 2A below, and*

(b) *in relation to a mineral planning authority for an area in Wales, has the meaning given by paragraph 2B below;]*

"mineral permission" means any planning permission, other than a planning permission granted by a development order, for minerals development;

"mineral planning authority"—

(a) *. . . , means a mineral planning authority within the meaning of the 1990 Act, . . .*

"mining site" means—

(a) *in a case where it appears to the mineral planning authority to be expedient to treat as a single site the aggregate of the land to which any two or more mineral permissions relate, the aggregate of the land to which those permissions relate; and*

(b) *in any other case, the land to which a mineral permission relates;*

"old mining permission" has the meaning given—

(a) *. . . , by section 22(1) of the 1991 Act, . . .*

(b) *. . . ; and*

"owner", in relation to any land—

(a) *. . . , means any person who*

(i) *is the estate owner in respect of the fee simple, or*

- (ii) *is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remains unexpired; . . .*

(2) *In determining whether it appears to them to be expedient to treat as a single site the aggregate of the land to which two or more mineral permissions relate a mineral planning authority shall have regard to any guidance issued for the purpose by the Secretary of State.*

(3) *Any reference (however expressed) in this Schedule to a mining site being a site to which relates—*

- (a) *an old mining permission; or*
- (b) *a mineral permission,*

is a reference to the mining site, or some part of it, being the land to which the permission relates.

(4) *For the purposes of this Schedule, an application made under paragraph 6 below is finally determined when—*

- (a) *the proceedings on the application, including any proceedings on or in consequence of an application under section 288 of the 1990 Act . . ., have been determined, and*
- (b) *any time for appealing under paragraph 9(1) below, or applying or further applying under paragraph 6 below, (where there is a right to do so) has expired.*

[(5) *Where an electronic communication is used to make an application to a mineral planning authority under paragraph 5 or 6 below, the applicant shall be taken to have agreed—*

- (a) *to the use of electronic communications for all purposes relating to his application which are capable of being effected using such communications, unless he gives notice in writing to the mineral planning authority in accordance with sub-paragraph (6) below; and*
- (b) *that his address for the purposes of such communications is the address incorporated into, or otherwise logically associated with, his application (or such other address as he may notify in writing to the mineral planning authority).*

(6) *An applicant may give notice that he is no longer to be taken to have agreed to the use of electronic communications for the purposes mentioned in paragraph (a) of sub-paragraph (5).*

(7) *Any such notice shall take effect from the date specified in it being not less than seven days from the date on which it is given.]*

[The first review date: mineral planning authorities in England

2A

(1) *In the application of this Schedule in relation to a mineral planning authority for an area in England, “first review date” means the date set by the authority in accordance with sub-paragraph (2) below as the first review date for the purposes of the first periodic review of the mineral permissions relating to a mining site.*

(2) *That date may not be earlier than the relevant date found under paragraph 3 below in relation to the site.*

(3) *This paragraph is subject to paragraphs 3A and 5 below (power to specify different relevant date, and postponement of first review date).*

The first review date: mineral planning authorities in Wales

2B

(1) In the application of this Schedule in relation to a mineral planning authority for an area in Wales, “first review date” in relation to a mining site means the relevant date found under paragraph 3 below in relation to the site.

(2) This paragraph is subject to paragraphs 3A and 5 below (power to specify different relevant date, and postponement of first review date).]

[The relevant date for the purposes of a first periodic review]

3

[(A1) This paragraph has effect for the purposes of paragraphs 2A and 2B above.]

(1) *Subject to sub-paragraph (7) below, in a case where the mineral permissions relating to a mining site include an old mining permission, the [relevant date] means—*

- (a) *the date falling fifteen years after the date upon which, pursuant to an application made under paragraph 2 of Schedule 2 to the 1991 Act . . ., the conditions to which that old mining permission is to be subject are finally determined under that Schedule; or*
- (b) *where there are two or more old mining permissions relating to that site, and the date upon which those conditions are finally determined is not the same date for each of those permissions, the date falling fifteen years after the date upon which was made the last such final determination to be so made in respect of any of those permissions,*

and paragraph 10(2) of Schedule 2 to the 1991 Act . . . (meaning of “finally determined”) shall apply for the purposes of this sub-paragraph as it applies for the purposes of section 22 of and Schedule 2 to the 1991 Act . . .

(2) *Subject to sub-paragraph (7) below, in the case of a mining site which is a Phase I or II site within the meaning of Schedule 13 to this Act, the [relevant date] means the date falling fifteen years after the date upon which, pursuant to an application made under paragraph 9 of that Schedule, there is determined under that paragraph the conditions to which the relevant planning permissions (within the meaning of that Schedule) relating to the site are to be subject.*

(3) *Subject to sub-paragraphs (4) and (7) below, in the case of a mining site—*

- (a) *which is not a Phase I or II site within the meaning of Schedule 13 to this Act; and*
- (b) *to which no old mining permission relates,*

the [relevant date] is the date falling fifteen years after the date upon which was granted the most recent mineral permission which relates to the site.

(4) *Where, in the case of a mining site falling within sub-paragraph (3) above, the most recent mineral permission relating to that site relates, or the most recent such permissions (whether or not granted on the same date) between them relate, to part only of the site, and in the opinion of the mineral planning authority it is expedient, for the purpose of ascertaining, under that sub-paragraph, the [relevant date] in respect of that site, to treat that permission or those permissions as having been granted at the same time as the last of the other mineral permissions relating to the site, the [relevant date] for that site shall be ascertained under that sub-paragraph accordingly.*

(5) *A mineral planning authority shall, in deciding whether they are of such an opinion as is mentioned in sub-paragraph (4) above, have regard to any guidance issued by the Secretary of State for the purpose.*

(6) *Subject to sub-paragraph (7) below, in the case of a mining site—*

- (a) *to which relates a mineral permission in respect of which an order has been made under section 97 of the 1990 Act . . . , or*
- (b) *in respect of which, or any part of which, an order has been made under paragraph 1 of Schedule 9 to the 1990 Act . . . ,*

the first review date shall be the date falling fifteen years after the date upon which the order took effect or, in a case where there is more than one such order, upon which the last of those orders to take effect took effect.

(7) *In the case of a mining site for which the preceding provisions of this paragraph have effect to specify two or more different dates as the [relevant date], the [relevant date] shall be the latest of those dates.*

[3A

(1) The Secretary of State may by order specify a [relevant date] different from the [relevant date] found in pursuance of paragraph 3(1) or (2).

(2) Sub-paragraph (3) applies if no [relevant date] is found in pursuance of paragraph 3(1) or (2).

(3) The Secretary of State may by order specify a [relevant date].

(4) An order under sub-paragraph (3) may make different provision for different cases or different classes of case.

(5) An order under this paragraph must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

Service of notice of first periodic review

4

[(A1) This paragraph applies—

- (a) where a mineral planning authority for an area in England determines that it will carry out a periodic review of the mineral permissions relating to a mining site, and that periodic review is the first periodic review of the permissions relating to that site, and
- (b) in relation to the first periodic review by a mineral planning authority for an area in Wales of the mineral permissions relating to a mining site.]

(1) *The mineral planning authority shall, in connection with the first periodic review . . . , no later than 12 months before the first review date, serve notice upon each person appearing to them to be the owner of any land, or entitled to an interest in any mineral, included in [the site to which the review relates].*

(2) *A notice required to be served under sub-paragraph (1) above shall—*

- (a) *specify the mining site to which it relates;*
- (b) *identify the mineral permissions relating to that site;*

- (c) *state the first review date;*
 - (d) *state that the first review date is the date by which an application must be made for approval of the conditions to which the mineral permissions relating to the site are to be subject and explain the consequences which will occur if no such application is made by that date; and*
 - (e) *explain the right to apply for postponement of the first review date and give the date by which such an application has to be made.*
- (3) *Where, in relation to any land or mineral included in a mining site, the mineral planning authority—*
- (a) *has served notice on any person under sub-paragraph (1) above; and*
 - (b) *has received no application under paragraph 6 below from that person by the date falling eight weeks before the first review date,*

the authority shall serve a written reminder on that person.

- (4) *A reminder required to be served under sub-paragraph (3) above shall—*
- (a) *indicate that the land or mineral in question is included in a mining site;*
 - (b) *comply with the requirements of sub-paragraph (2)(a) to (d) above; and*
 - (c) *be served on the person in question on or before the date falling four weeks before the first review date.*

(5) *Sub-paragraph (1) above shall not require the mineral planning authority to serve notice under that sub-paragraph upon any person whose identity or address for service is not known to and cannot practicably, after reasonable inquiry, be ascertained by them, but in any such case the authority shall cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the notice which they would (apart from the provisions of this sub-paragraph) have had to serve under that sub-paragraph on the owner of that land or interest.*

(6) *If, in a case where sub-paragraph (5) above applies, no person makes an application to the authority under paragraph 6 below in respect of the mining site which includes the land or interest in question by the date falling eight weeks before the first review date, the authority shall cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the written reminder that would, in a case not falling within sub-paragraph (5) above, have been served under sub-paragraph (3) above.*

(7) *Where by sub-paragraph (5) or (6) above a copy of any notice is required to be affixed to an object on any land that copy shall—*

- (a) *be displayed in such a way as to be easily visible and legible;*
- (b) *be first displayed—*
 - (i) *in a case where the requirement arises under sub-paragraph (5) above, no later than 12 months before the first review date; or*
 - (ii) *in a case where the requirement arises under sub-paragraph (6) above, no later than the date falling four weeks before the first review date;*

and

- (c) *be left in position for at least the period of 21 days from the date when it is first displayed, but where the notice is, without fault or intention of the authority, removed, obscured or defaced before that period has elapsed, that requirement shall be treated as having been complied with if the authority has taken reasonable steps for protection of the notice and, if need be, its replacement.*

(8) *In sub-paragraphs (5) and (6) above, any reference to a conspicuous object on any land includes, in a case where the person serving a notice considers that there are no or insufficient such objects on the land, a reference to a post driven into or erected upon the land by the person serving the notice for the purpose of having affixed to it a copy of the notice in question.*

Application for postponement of the first review date

5

(1) *Any person who is the owner of any land, or of any interest in any mineral, comprised in a mining site may, no later than the day upon which expires the period of three months from the day upon which notice was served upon him under paragraph 4 above, apply under this paragraph to the mineral planning authority for the postponement of the first review date.*

(2) *An application under this paragraph shall be in writing and shall set out—*

- (a) *the conditions to which each mineral permission relating to the site is subject;*
- (b) *the applicant's reasons for considering those conditions to be satisfactory; and*
- (c) *the date which the applicant wishes to have substituted for the first review date.*

(3) *Where the mineral planning authority receive an application made under this paragraph—*

- (a) *if they consider the conditions referred to in sub-paragraph (2)(a) above to be satisfactory they shall agree to the first review date being postponed in which event they shall determine the date to be substituted for that date;*
- (b) *in any other case they shall refuse the application.*

(4) *When a mineral planning authority determine an application made under this paragraph, they shall notify the applicant in writing of their decision and, in a case where they have agreed to the postponement of the first review date, shall notify the applicant of the date which they have determined should be substituted for the first review date.*

(5) *Where, within the period of three months of the mineral planning authority having received an application under this paragraph, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority have not given notice, under sub-paragraph (4) above, to the applicant of their decision upon the application, the authority shall be treated as having, at the end of that period or, as the case may be, that extended period—*

- (a) *agreed to the first review date being postponed; and*
- (b) *determined that the date referred to in sub-paragraph (2)(c) above be substituted for the first review date.*

Application to determine the conditions to which the mineral permissions relating to a mining site are to be subject

6

(1) Any person who is the owner of any land, or who is entitled to an interest in a mineral, may, if that land or mineral is or forms part of a mining site, apply to the mineral planning authority to determine the conditions to which the mineral permissions relating to that site are to be subject.

(2) An application under this paragraph shall be in writing and shall—

- (a) identify the mining site in respect of which the application is made and state that the application is made in connection with the first periodic review of the mineral permissions relating to that site;
- (b) specify the land or minerals comprised in the site of which the applicant is the owner or, as the case may be, in which the applicant is entitled to an interest;
- (c) identify the mineral permissions relating to the site;
- (d) identify, and give [a postal address] for, each other person that the applicant knows or, after reasonable inquiry, has cause to believe to be an owner of any land, or entitled to any interest in any mineral, comprised in the site;
- (e) set out the conditions to which the applicant proposes the permissions referred to in paragraph (c) above should be subject; and
- (f) be accompanied by the appropriate certificate (within the meaning of sub-paragraph (3) . . . below).

(3) For the purposes of sub-paragraph (2) above, < . . . > the appropriate certificate is such a certificate—

- (a) as would be required, under section 65 of the 1990 Act and any provision of a development order made by virtue of that section, to accompany the application if it were an application for planning permission for minerals development, but
- (b) with such modifications as are required for the purposes of this paragraph,

and section 65(6) of the 1990 Act shall also have effect in relation to any certificate purporting to be the appropriate certificate.

(4) . . .

(5) Where the mineral planning authority receive an application under this paragraph in relation to a mining site they shall determine the conditions to which each mineral permission relating to the site is to be subject.

(6) The conditions imposed by virtue of a determination under sub-paragraph (5) above—

- (a) may include any conditions which may be imposed on a grant of planning permission for minerals development;
- (b) may be in addition to, or in substitution for, any existing conditions to which the permission in question is subject.

(7) In determining that a mineral permission is to be subject to any condition relating to development for which planning permission is granted by a development order, the mineral planning authority shall have regard to any guidance issued for the purpose by the Secretary of State.

(8) Subject to sub-paragraph (9) below, where, within the period of three months of the mineral planning authority having received an application under this paragraph, or within such extended period as

may at any time be agreed upon in writing between the applicant and the authority, the authority have not given notice to the applicant of their decision upon the application, the authority shall be treated as having at the end of that period or, as the case may be, that extended period, determined that the conditions to which any mineral permission to which the application relates is to be subject are those specified in the application as being proposed in relation to that permission; and any such permission shall, from that time, have effect subject to those conditions.

(9) Where a mineral planning authority, having received an application under this paragraph, are of the opinion that they are unable to determine the application unless further details are supplied to them, they shall within the period of one month from having received the application give notice to the applicant—

- (a) stating that they are of such opinion; and
- (b) specifying the further details which they require,

and where the authority so serve such a notice the period of three months referred to in sub-paragraph (8) above shall run not from the authority having received the application but from the time when the authority have received all the further details specified in the notice.

(10) Without prejudice to the generality of sub-paragraph (9) above, the further details which may be specified in a notice under that sub-paragraph include any—

- (a) information, plans or drawings; or
- (b) evidence verifying any particulars of details supplied to the authority in respect of the application in question,

which it is reasonable for the authority to request for the purpose of enabling them to determine the application.

Permissions ceasing to have effect

7

Where no application under paragraph 6 above in respect of a mining site has been served on the mineral planning authority by the first review date, or by such later date as may at any time be agreed upon in writing between the applicant and the authority, each mineral permission—

- (a) relating to the site; and
- (b) identified in the notice served in relation to the site under paragraph 4 above,

shall cease to have effect, except insofar as it imposes any restoration or aftercare condition, on the day following the first review date or, as the case may be, such later agreed date.

Reference of applications to the Secretary of State

8

(1) The Secretary of State may give directions requiring applications made under paragraph 6 above to any mineral planning authority to be referred to him for determination instead of being dealt with by the authority.

(2) A direction under sub-paragraph (1) above may relate either to a particular application or to applications of a class specified in the direction.

(3) *Where an application is referred to the Secretary of State in accordance with a direction under sub-paragraph (1) above—*

- (a) *subject to paragraph (b) below, paragraph 6(5) and (6) above, and paragraph 11 below so far as relating to applications under paragraph 6 above, shall apply, with any necessary modifications, to his determination of the application as they apply to the determination of applications by the mineral planning authority;*
- (b) *before determining the application the Secretary of State must, if either the applicant or the mineral planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose; and*
- (c) *the decision of the Secretary of State on the application shall be final.*

Appeals

9

(1) *Where on an application under paragraph 6 above the mineral planning authority determine conditions that differ in any respect from the proposed conditions set out in the application, the applicant may appeal to the Secretary of State.*

(2) *An appeal under sub-paragraph (1) above must be made by giving notice of appeal to the Secretary of State, before the end of the period of six months beginning with the determination, on a form supplied by or on behalf of the Secretary of State for use for that purpose, and giving, so far as reasonably practicable, the information required by that form.*

(3) *Paragraph 6 of Schedule 2 to the 1991 Act (determination of appeals) shall, . . . , apply to appeals under sub-paragraph (1) above as it applies to appeals under paragraph 5 of that Schedule.*

(4) *. . . , sections 284 to 288 of the 1990 Act shall have effect as if the action mentioned in section 284(3) of that Act included any decision of the Secretary of State—*

- (a) *on an appeal under sub-paragraph (1) above; or*
- (b) *on an application under paragraph 6 above referred to him under paragraph 8 above.*

(5)–(7) . . .

Time from which conditions determined under this Schedule are to take effect

10

(1) *Where an application has been made under paragraph 6 above in respect of a mining site, each of the mineral permissions relating to the site shall, from the time when the application is finally determined, have effect subject to the conditions to which it is determined under this Schedule that that permission is to be subject.*

(2) *Sub-paragraph (1) above is without prejudice to paragraph 6(8) above.*

Two or more applicants

11

(1) *Where a mineral planning authority have received from any person a duly made application under paragraph 5 or 6 above—*

- (a) *that person may not make any further application under the paragraph in question in respect of the same site; and*
- (b) *if the application has been determined, whether or not in the case of an application under paragraph 6 above it has been finally determined, no other person may make an application under the paragraph in question in respect of the same site.*

(2) *Where—*

- (a) *a mineral planning authority have received from any person in respect of a mineral site a duly made application under paragraph 5 or 6 above; and*
- (b) *the authority receives from another person a duly made application under the paragraph in question in respect of the same site,*

then for the purpose of the determination of the applications and any appeal against such a determination, this Schedule shall have effect as if the applications were a single application received by the authority on the date on which the later application was received by the authority and references to the applicant shall be read as references to either or any of the applicants.

Second and subsequent periodic reviews

12

[(A1) This paragraph applies—

- (a) *where a mineral planning authority for an area in England determines that it will carry out a periodic review of the mineral permissions relating to a mining site, and that periodic review is the second or a subsequent periodic review of the permissions relating to that site, and*
- (b) *in relation to the second or any subsequent periodic review by a mineral planning authority for an area in Wales of the mineral permissions relating to a mining site.*

(A2) *In the application of this paragraph in relation to a mineral planning authority for an area in England “the review date” means the date set by the authority as the review date for the purposes of the periodic review.*

(A3) *That date may not be earlier than the relevant date found under sub-paragraph (1) below in relation to the site.*

(A4) *In the application of this paragraph in relation to a mineral planning authority for an area in Wales “the review date” means the relevant date found under sub-paragraph (1) below in relation to the site.]*

(1) *In this paragraph, in relation to a mining site, but subject to paragraph 5 above as applied by sub-paragraph (2) below, [“relevant date”] means—*

- (a) *in the case of the second periodic review, the date falling fifteen years after the date upon which was finally determined an application made under paragraph 6 above in respect of the site; and*
- (b) *in the case of subsequent periodic reviews, the date falling fifteen years after the date upon which there was last finally determined under this Schedule an application made in respect of that site under paragraph 6 above as applied by sub-paragraph (2) below.*

(2) *Paragraphs 4 to 11 above shall apply in respect of the second or any subsequent periodic review of the mineral permissions relating to a mining site as they apply to the first such periodic review, but as if—*

- (a) any reference in those paragraphs to the “first review date” were a reference to the review date; . . .
- (b) the references in paragraphs 4(1) and 6(2)(a) above to the first periodic review were references to the periodic review in question[, and
- (c) paragraph 4(A1) were omitted].

Compensation

13

(1) This paragraph applies where—

- (a) an application made under paragraph 6 above in respect of a mining site is finally determined; and
- (b) the conditions to which the mineral permissions relating to the site are to be subject, as determined under this Schedule, differ in any respect from the proposed conditions set out in the application; and
- (c) the effect of the new conditions, except insofar as they are restoration or aftercare conditions, as compared with the effect of the existing conditions, except insofar as they were restoration or aftercare conditions, is to restrict working rights in respect of the site.

(2) For the purposes of this paragraph—

“the new conditions”, in relation to a mining site, means the conditions, determined under this Schedule, to which the mineral permissions relating to the site are to be subject; and

“the existing conditions”, in relation to a mining site, means the conditions to which the mineral permissions relating to the site were subject immediately prior to the final determination of the application made under paragraph 6 above in respect of that site.

(3) For the purposes of this paragraph, working rights are restricted in respect of a mining site if any of—

- (a) the size of the area which may be used for the winning and working of minerals or the depositing of mineral waste;
- (b) the depth to which operations for the winning and working of minerals may extend;
- (c) the height of any deposit of mineral waste;
- (d) the rate at which any particular mineral may be extracted;
- (e) the rate at which any particular mineral waste may be deposited;
- (f) the period at the expiry of which any winning or working of minerals or depositing of mineral waste is to cease; or
- (g) the total quantity of minerals which may be extracted from, or of mineral waste which may be deposited on, the site,

is restricted or reduced in respect of the mining site in question.

(4) In a case to which this paragraph applies, but subject to sub-paragraph (6) below, . . ., Parts IV and XI of the 1990 Act . . ., shall have effect as if an order made under section 97 of the 1990 Act . . .—

- (a) *had been confirmed by the Secretary of State under section 98 of the 1990 Act . . . at the time when the application in question was finally determined; and*
- (b) *as so confirmed, had effect to modify those permissions to the extent specified in sub-paragraph (6) below.*

(5) *For the purposes of this paragraph, the order referred to in sub-paragraph (4) above is one whose only effect adverse to the interests of any person having an interest in the land or minerals comprised in the mineral site is to restrict working rights in respect of the site to the same extent as the relevant restriction.*

(6) *For the purposes of section 116 of the 1990 Act . . . and of any regulations made under [that section], the permissions treated as being modified by the order mentioned in sub-paragraph (4) above shall be treated as if they were planning permissions for development which neither consists of nor includes any minerals development.*

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment (in relation to England and Wales): 1 November 1995: see SI 1995/2765, art 2.

Appointment (in relation to Scotland): 1 January 1997: see SI 1996/2857, art 2.

Amendment

Para A1: inserted by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 2.

Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

This Schedule is repealed, in relation to Scotland only, by the Planning (Consequential Provisions) (Scotland) Act 1997, s 3, Sch 1, Part II.

Para 1: words “for an area in Wales” in square brackets inserted by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 3.

Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 2: in sub-para (1) definition “first review date” substituted by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 4.

Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 2: words omitted repealed by the Planning (Consequential Provisions) (Scotland) Act 1997, s 3, Sch 1, Pt III.

Para 2: sub-paras (5)–(7) inserted in relation to England by SI 2003/956, art 10(1), (3)(a) and in relation to Wales by SI 2004/3156, art 10(1), (3)(a).

Date in force (in relation to England): 31 March 2003: see SI 2003/956, art 1(1).

Date in force (in relation to Wales): 1 January 2005: see SI 2004/3156, art 1(1).

Paras 2A, 2B: inserted by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 5.

Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 3 heading: substituted by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 6(1), (4).

Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 3: sub-para (A1) inserted by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 6(1), (2).

Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 3: in sub-para (1) words “relevant date” in square brackets substituted by the Growth and

Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 6(1), (3).
Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 3: words omitted repealed by the Planning (Consequential Provisions) (Scotland) Act 1997, s 3, Sch 1, Pt III.

Para 3: in sub-para (2) words “relevant date” in square brackets substituted by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 6(1), (3).
Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 3: in sub-para (3) words “relevant date” in square brackets substituted by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 6(1), (3).
Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 3: in sub-para (4) words “relevant date” in square brackets in both places they occur substituted by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 6(1), (3).
Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 3: in sub-para (7) words “relevant date” in square brackets in both places they occur substituted by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 6(1), (3).
Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 3A: inserted by the Planning and Compulsory Purchase Act 2004, s 118(2), Sch 7, para 19(1), (4).
Date in force: 6 August 2004: see SI 2004/2097, art 2.

Para 3A: in sub-paras (1)–(3) words “relevant date” in square brackets in each place they occur substituted by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 7.
Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 4: sub-para (A1) inserted by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 8(1), (2).
Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 4: in sub-para (1) words omitted repealed by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 8(1), (3)(a).
Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 4: in sub-para (1) words “the site to which the review relates” in square brackets substituted by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 8(1), (3)(b).
Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 6: in sub-para (2)(d) words “a postal address” in square brackets substituted in relation to England by SI 2003/956, art 10(1), (3)(b) and in relation to Wales by SI 2004/3156, art 10(1), (3)(b).
Date in force (in relation to England): 31 March 2003: see SI 2003/956, art 1(1).
Date in force (in relation to Wales): 1 January 2005: see SI 2004/3156, art 1(1).

Para 6: words omitted repealed by the Planning (Consequential Provisions) (Scotland) Act 1997, s 3, Sch 1, Pt III.

Para 9: words omitted repealed by the Planning (Consequential Provisions) (Scotland) Act 1997, s 3, Sch 1, Pt III.

Para 12: sub-paras (A1)–(A4) inserted by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 9(1), (2).
Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 12: in sub-para (1) words “relevant date” in square brackets substituted by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 9(1), (3).
Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 12: in sub-para (2)(a) word omitted repealed by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 9(1), (4)(a).

Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 12: sub-para (2)(c) and word “, and” immediately preceding it inserted by the Growth and Infrastructure Act 2013, s 10(1), Sch 3, paras 1, 9(1), (4)(b).

Date in force: 25 June 2013: see SI 2013/1488, art 3(d); for transitional provisions see the Growth and Infrastructure Act 2013, s 10(2)–(6).

Para 13: words omitted repealed and words in square brackets substituted, in relation to England and Wales, by the Planning (Consequential Provisions) (Scotland) Act 1997, ss 3, 4, Sch 1, Part III, Sch 3, para 60(2).

See Further

See further, in relation to Wales, the disapplication of para 6(8) above to an undetermined ROMP application in specified circumstances: the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009, SI 2009/3342, reg 42.

See further, in relation to Wales, the application of para 9 above, with modifications, where the relevant mineral planning authority has not given written notice of its determination under SI 2009/3342, reg 44: the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009, SI 2009/3342, reg 45.

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

SCHEDULE 15

MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO FISHERIES

Section 105

Interpretation

1

In this Schedule—

“local statutory provision” means—

- (a) a provision of a local Act (including an Act confirming a provisional order);
- (b) a provision of so much of any public general Act as has effect with respect to particular persons or works or with respect to particular provisions falling within any paragraph of this definition;
- (c) a provision of an instrument made under any provision falling within paragraph (a) or (b) above;
- (d) a provision of any other instrument which is in the nature of a local enactment;

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978;

“the transfer date” has the same meaning as in Part I of this Act.

General modifications of references to the National Rivers Authority

2

(1) Subject to—

- (a) the following provisions of this Schedule,
- (b) the provisions of sections 102 to 104 of this Act, and
- (c) any repeal made by this Act,

any provision to which this paragraph applies which contains, or falls to be construed as containing, a reference (however framed and whether or not in relation to an area) to the National Rivers Authority shall have effect on and after the transfer date as if that reference were a reference to the Agency.

(2) Sub-paragraph (1) above is subject to paragraph 1(2)(a) of Schedule 17 to the Water Act 1989 (references in certain local statutory provisions or subordinate legislation to the area of a particular water authority to have effect as references to the area which, immediately before the transfer date within the meaning of that Act, was the area of that authority for the purposes of their functions relating to fisheries).

(3) Subject as mentioned in sub-paragraph (1) above, any provision to which this paragraph applies which contains, or falls to be construed as containing, a reference (however framed) to the whole area in relation to which the National Rivers Authority carries out its functions in relation to fisheries shall have effect on and after the transfer date as if that reference were a reference to the whole area in relation to which the Agency carries out its functions relating to fisheries.

(4) The provisions to which this paragraph applies are the provisions of—

- (a) . . .
- (b) the Salmon and Freshwater Fisheries Act 1975; and
- (c) any local statutory provision or subordinate legislation which is in force immediately before the transfer date and—
 - (i) relates to the carrying out by the National Rivers Authority of any function relating to fisheries; or
 - (ii) in the case of subordinate legislation, was made by virtue of any provision to which this paragraph applies . . .

(5) The modifications made by this paragraph shall be subject to any power by subordinate legislation to revoke or amend any provision to which this paragraph applies; and, accordingly, any such power, including the powers conferred by section 121 of this Act and paragraph 3 below, shall be exercisable so as to exclude the operation of this paragraph in relation to the provisions in relation to which the power is conferred.

Power to amend subordinate legislation etc

3

(1) If it appears to the Minister or the Secretary of State to be appropriate to do so for the purposes of, or in consequence of, the coming into force of any provision of this Schedule, he may by order revoke or amend any subordinate legislation.

(2) An order under this paragraph may—

- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (b) contain such supplemental, consequential and transitional provision as the Minister or the Secretary of State considers appropriate.

(3) The power conferred by virtue of this paragraph in relation to subordinate legislation made under any enactment shall be without prejudice to any other power to revoke or amend subordinate legislation made under that enactment, but—

- (a) no requirement imposed with respect to the exercise of any such other power shall apply in relation to any revocation or amendment of that legislation by an order under this paragraph; and
- (b) the power to make an order under this paragraph shall be exercisable (instead of in accordance with any such requirement) by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

...

4

...

The Sea Fisheries Regulation Act 1966

5

...

6–26

< ... >

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Paras 1, 2, 4, 5(2), (3), 6–12, 14(2), (3), 15, 16, 18, 19, 21–24: Appointment: 1 April 1996: see SI 1996/186, art 3.

Paras 25, 26 (in part): Appointment: 21 September 1995: see SI 1995/1983, art 3.

Paras 13, 14(1), (4), 17, 20, 26(2): Appointment: 1 January 1999: see SI 1995/1983, art 4.

Amendment

Para 5: sub-paras (2), (3) amend the Sea Fisheries Regulation Act 1966, ss 2(2), 18(3).

Para 2: sub-para (4)(a) repealed by the Marine and Coastal Access Act 2009, s 321, Sch 22, Pt 4.

Date in force (in relation to Wales): 1 April 2010: see SI 2010/630, art 3(b); for transitional provisions see arts 8, 12 thereof.

Date in force (in relation to England): 1 April 2011: see SI 2011/556, art 2(1), (2)(o), (3).

Para 2: in sub-para (4)(c)(i) words omitted repealed in relation to England and Wales by SI 2009/463, reg 45, Sch 2, para 9(c)(i) and in relation to Scotland by SSI 2009/85, reg 48, Sch 2, para 9(c)(i).

Date in force (in relation to England and Wales): 27 March 2009: see SI 2009/463, reg 1(2)(c).

Date in force (in relation to Scotland): 27 March 2009: see SSI 2009/85, reg 1(2)(c).

Para 4: repealed in relation to England and Wales by SI 2009/463, reg 45, Sch 2, para 9(c)(ii) and in relation to Scotland by SSI 2009/85, reg 48, Sch 2, para 9(c)(ii).

Date in force (in relation to England and Wales): 27 March 2009: see SI 2009/463, reg 1(2)(c).

Date in force (in relation to Scotland): 27 March 2009: see SSI 2009/85, reg 1(2)(c).

Para 5: repealed by the Marine and Coastal Access Act 2009, s 321, Sch 22, Pt 4.

Date in force (in relation to Wales): 1 April 2010: see SI 2010/630, art 3(b); for transitional provisions see arts 8, 12 thereof.

Date in force (in relation to England): 1 April 2011: see SI 2011/556, art 2(1), (2)(o), (3).

Paras 6–22: amend the Sea Fish (Conservation) Act 1967, s 18, and the Salmon and Freshwater Fisheries Act 1975, ss 5, 6, 8, 9, 10, 11, 15, 17, 18, 30, 35, 39, 41, 43, Sch 1.

Paras 8, 9: repealed by the Marine and Coastal Access Act 2009, s 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 27(b).

Para 15: repealed by the Marine and Coastal Access Act 2009, s 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 27(b).

Para 22: repealed by the Marine and Coastal Access Act 2009, s 321, Sch 22, Pt 5(B).

Date in force: 12 January 2010: see SI 2009/3345, art 2, Schedule, para 27(b).

Para 23: repealed in relation to England and Wales by SI 2009/463, reg 45, Sch 2, para 9(c)(ii) and in relation to Scotland by SSI 2009/85, reg 48, Sch 2, para 9(c)(ii).

Date in force (in relation to England and Wales): 27 March 2009: see SI 2009/463, reg 1(2)(c).

Date in force (in relation to Scotland): 27 March 2009: see SSI 2009/85, reg 1(2)(c).

Para 24: repealed by the Marine and Coastal Access Act 2009, s 321, Sch 22, Pt 4.

Date in force (in relation to Wales): 1 April 2010: see SI 2010/630, art 3(b); for transitional provisions see arts 8, 12 thereof.

Date in force (in relation to England): 1 April 2011: see SI 2011/556, art 2(1), (2)(o), (3).

Paras 24–26: amend the Salmon Act 1986, s 37 and the Water Resources Act 1991, s 115, Sch 25

Transfer of Functions

Functions of the Secretary of State and the Minister, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

SCHEDULE 16

POLLUTION OF RIVERS AND COASTAL WATERS IN SCOTLAND: AMENDMENT OF THE CONTROL OF POLLUTION ACT 1974

Section 106

...

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Extent

This Schedule applies to Scotland only: see s 125(9).

Amendment

This Schedule inserts the Control of Pollution Act 1974, ss 30F–30J, and contains amendments to ss 31, 31B, 34, 39, 56, 87 thereof.

SCHEDULE 17

STATUTORY NUISANCES: SCOTLAND

Section 107

...

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Repealed in part by the Public Health etc (Scotland) Act 2008, s 126(1), Sch 3, Pt 1.

Date in force: 1 October 2009: see SSI 2009/319, art 2(a), Sch 1.

SCHEDULE 18 SUPPLEMENTAL PROVISIONS WITH RESPECT TO POWERS OF ENTRY

Section 108

Interpretation

1

(1) In this Schedule—

“designated person” means an authorised person, within the meaning of section 108 of this Act and includes a person designated by virtue of paragraph 2 below;

“relevant power” means a power conferred by section 108 of this Act, including a power exercisable by virtue of a warrant under this Schedule.

(2) Expressions used in this Schedule and in section 108 of this Act have the same meaning in this Schedule as they have in that section.

Issue of warrants

2

(1) If it is shown to the satisfaction of a justice of the peace or, in Scotland, the sheriff or a justice of the peace, on sworn information in writing—

(a) that there are reasonable grounds for the exercise in relation to any premises of a relevant power; and

(b) that one or more of the conditions specified in sub-paragraph (2) below is fulfilled in relation to those premises,

the justice or sheriff may by warrant authorise an enforcing authority to designate a person who shall be authorised to exercise the power in relation to those premises, in accordance with the warrant and, if need be, by force.

[(1A) If it is shown to the satisfaction of the sheriff or a justice of the peace, on sworn information in writing, that there are reasonable grounds for the exercise in relation to any documents of a power in

section 108(4)(ka) of this Act, the sheriff or justice of the peace may by warrant authorise SEPA to designate a person who shall be authorised to exercise the power in relation to the documents in accordance with the warrant and, if need be, by force.]

(2) The conditions mentioned in sub-paragraph (1)(b) above are—

- (a) that the exercise of the power in relation to the premises has been refused;
- (b) that such a refusal is reasonably apprehended;
- (c) that the premises are unoccupied;
- (d) that the occupier is temporarily absent from the premises and the case is one of urgency; or
- (e) that an application for admission to the premises would defeat the object of the proposed entry.

(3) *In a case where subsection (6) of section 108 of this Act applies, a justice of the peace or sheriff shall not issue a warrant under this Schedule by virtue only of being satisfied that the exercise of a power in relation to any premises has been refused, or that a refusal is reasonably apprehended, unless he is also satisfied that the notice required by that subsection has been given and that the period of that notice has expired.*

[(3) A warrant under this Schedule in respect of the power in section 108(6) of this Act to enter any premises used for residential purposes shall not be issued unless the sheriff or justice of the peace is satisfied that such entry is necessary for any purpose for which the power is proposed to be exercised.]

(4) Every warrant under this Schedule shall continue in force until the purposes for which the warrant was issued have been fulfilled.

[(5) A sheriff may grant a warrant under this Schedule in relation to premises situated in an area of Scotland even though the area is outside the territorial jurisdiction of that sheriff; and any such warrant may, without being backed or endorsed by another sheriff, be executed throughout Scotland in the same way as it may be executed within the sheriffdom of the sheriff who granted it.]

Manner of exercise of powers

3

A person designated as the person who may exercise a relevant power shall[, if so required,] produce evidence of his *designation and other* authority before he exercises the power.

Information obtained to be admissible in evidence

4

(1) Subject to section 108(12) of this Act, information obtained in consequence of the exercise of a relevant power, with or without the consent of any person, shall be admissible in evidence against that or any other person.

(2) Without prejudice to the generality of sub-paragraph (1) above, information obtained by means of monitoring or other apparatus installed on any premises in the exercise of a relevant power, with or without the consent of any person in occupation of the premises, shall be admissible in evidence in any proceedings against that or any other person.

Duty to secure premises

5

A person who, in the exercise of a relevant power enters on any premises which are unoccupied or whose occupier is temporarily absent shall leave the premises as effectually secured against trespassers as he found them.

Compensation

6

(1) Where any person exercises any power conferred by section 108(4)(a) or (b) or (5) of this Act, it shall be the duty of the enforcing authority under whose authorisation he acts to make full compensation to any person who has sustained loss or damage by reason of—

- (a) the exercise by the designated person of that power; or
- (b) the performance of, or failure of the designated person to perform, the duty imposed by paragraph 5 above.

(2) Compensation shall not be payable by virtue of sub-paragraph (1) above in respect of any loss or damage if the loss or damage—

- (a) is attributable to the default of the person who sustained it; or
- (b) is loss or damage in respect of which compensation is payable by virtue of any other provision of the pollution control enactments.

(3) Any dispute as to a person's entitlement to compensation under this paragraph, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator or, in Scotland, arbiter appointed by agreement between the enforcing authority in question and the person who claims to have sustained the loss or damage or, in default of agreement, by the Secretary of State.

(4) A designated person shall not be liable in any civil or criminal proceedings for anything done in the purported exercise of any relevant power if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Para 2: sub-para (1A) inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (4)(a)(i).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Para 2: sub-para (3) substituted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (4)(a)(ii).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Para 2: sub-para (5) inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (4)(a)(iii).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Para 3: words “, if so required,” in square brackets inserted, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (4)(b)(i).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Para 3: words “designation and other” in italics repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 46(1), (4)(b)(ii).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

See Further

See further, the application of this Schedule, with modifications, in relation to enforcement powers: the Justification of Practices Involving Ionising Radiation Regulations 2004, SI 2004/1769, reg 23, Sch 1.

See further, in relation to the application of paras 2–6 above, with modifications, for the purposes of functions under the Producer Responsibility Obligations (Packaging Waste) Regulations 2007: the Producer Responsibility Obligations (Packaging Waste) Regulations 2007, SI 2007/871, reg 35(5), (6).

Transfer of Functions

Functions of the Secretary of State, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

SCHEDULE 19

OFFENCES RELATING TO FALSE OR MISLEADING STATEMENTS OR FALSE ENTRIES

Section 112

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NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

This Schedule contains amendments to the Control of Pollution Act 1974, ss 34, 93, the Water (Scotland) Act 1980, ss 93, 94, the Control of Pollution (Amendment) Act 1989, s 7, the Environmental Protection Act 1990, s 71, the Water Resources Act 1991, s 206, inserts the Radioactive Substances Act 1993, s 34A, and substitutes the Environmental Protection Act 1990, s 44.

SCHEDULE 20

DELEGATION OF APPELLATE FUNCTIONS OF THE SECRETARY OF STATE

Section 114

Interpretation

1

In this Schedule—

“appointed person” means a person appointed under section 114(1)(a) of this Act; and

“appointment”, in the case of any appointed person, means appointment under section 114(1)(a) of this Act.

Appointments

2

An appointment under section 114(1)(a) of this Act must be in writing and—

- (a) may relate to any particular appeal, matters or questions specified in the appointment or to appeals, matters or questions of a description so specified;
- (b) may provide for any function to which it relates to be exercisable by the appointed person either unconditionally or subject to the fulfilment of such conditions as may be specified in the appointment; and
- (c) may, by notice in writing given to the appointed person, be revoked at any time by the Secretary of State in respect of any appeal, matter or question which has not been determined by the appointed person before that time.

Powers of appointed person

3

Subject to the provisions of this Schedule, an appointed person shall, in relation to any appeal, matter or question to which his appointment relates, have the same powers and duties as the Secretary of State, other than—

- (a) any function of making regulations;
- (b) any function of holding an inquiry or other hearing or of causing an inquiry or other hearing to be held; or
- (c) any function of appointing a person for the purpose—
 - (i) of enabling persons to appear before and be heard by the person so appointed; or
 - (ii) of referring any question or matter to that person.

Holding of local inquiries and other hearings by appointed persons

4

(1) If either of the parties to an appeal, matter or question expresses a wish to appear before and be heard by the appointed person, the appointed person shall give both of them an opportunity of appearing and being heard.

(2) Whether or not a party to an appeal, matter or question has asked for an opportunity to appear and be heard, the appointed person—

- (a) may hold a local inquiry or other hearing in connection with the appeal, matter or question, and
- (b) shall, if the Secretary of State so directs, hold a local inquiry in connection with the appeal, matter or question,

but this sub-paragraph is subject to sub-paragraph (3) below.

(3) No local inquiry shall be held by virtue of this Schedule in connection with an appeal under—

- (a) *section 42B(5) of the Control of Pollution Act 1974,*

- (b) section 22(5), 66(5) or 78T(3) of the Environmental Protection Act 1990, . . .
- (c) section 191B(5) of the Water Resources Act 1991, [. . .
- [(d) regulation 53 of the Environmental Permitting (England and Wales) Regulations 2010,]] [or
- (e) regulation 46(j) of the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (SSI 2005/348),]

(appeals against decisions that information is not commercially confidential), or any matter involved in such an appeal, and any hearing held by virtue of this Schedule in connection with any such appeal or matter must be held in private.

(4) Where an appointed person holds a local inquiry or other hearing by virtue of this Schedule, an assessor may be appointed by the Secretary of State to sit with the appointed person at the inquiry or hearing and advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal, matter or question.

(5) Subject to paragraph 5 below, the costs of a local inquiry held under this Schedule shall be defrayed by the Secretary of State.

Local inquiries under this Schedule: evidence and costs

5

(1) In relation to England and Wales, subsections (2) to (5) of section 250 of the Local Government Act 1972 (local inquiries: evidence and costs) shall apply to local inquiries or other hearings held under this Schedule by an appointed person as they apply to inquiries caused to be held under that section by a Minister, but with the following modifications, that is to say—

- (a) with the substitution in subsection (2) (evidence) for the reference to the person appointed to hold the inquiry of a reference to the appointed person;
- (b) with the substitution in subsection (4) (recovery of costs of holding the inquiry) for the references to the Minister causing the inquiry to be held of references to the Secretary of State;
- (c) taking the reference in that subsection to a local authority as including the Agency [or the Natural Resources Body for Wales, as appropriate]; and
- (d) with the substitution in subsection (5) (orders as to the costs of the parties) for the reference to the Minister causing the inquiry to be held of a reference to the appointed person or the Secretary of State.

(2) In relation to Scotland, subsections (3) to (8) of section 210 of the Local Government (Scotland) Act 1973 (which relate to the costs of and holding of local inquiries) shall apply to local inquiries or other hearings held under this Schedule as they apply to inquiries held under that section, but with the following modifications, that is to say—

- (a) with the substitution in subsection (3) (notice of inquiry) for the reference to the person appointed to hold the inquiry of a reference to the appointed person;
- (b) with the substitution in subsection (4) (evidence) for the reference to the person appointed to hold the inquiry and, in paragraph (b), the reference to the person holding the inquiry of references to the appointed person;
- (c) with the substitution in subsection (6) (expenses of witnesses etc) for the references to the Minister causing the inquiry to be held of a reference to the appointed person or the Secretary

- of State;
- (d) with the substitution in subsection (7) (expenses) for the references to the Minister of references to the appointed person or the Secretary of State;
 - (e) with the substitution in subsection (7A) (recovery of entire administrative expense)—
 - (i) for the first reference to the Minister of a reference to the appointed person or the Secretary of State;
 - (ii) in paragraph (a), for the reference to the Minister of a reference to the Secretary of State; and
 - (iii) in paragraph (b), for the reference to the Minister holding the inquiry of a reference to the Secretary of State;
 - (f) with the substitution in subsection (7B) (power to prescribe daily amount)—
 - (i) for the first reference to the Minister of a reference to the Secretary of State;
 - (ii) in paragraphs (a) and (c), for the references to the person appointed to hold the inquiry of references to the appointed person; and
 - (iii) in paragraph (d), for the reference to the Minister of a reference to the appointed person or the Secretary of State; and
 - (g) with the substitution in subsection (8) (certification of expenses) for the reference to the Minister, the reference to him and the reference to the Crown of references to the appointed person or the Secretary of State.

Revocation of appointments and making of new appointments

6

- (1) Where under paragraph 2(c) above the appointment of the appointed person is revoked in respect of any appeal, matter or question, the Secretary of State shall, unless he proposes to determine the appeal, matter or question himself, appoint another person under section 114(1)(a) of this Act to determine the appeal, matter or question instead.
- (2) Where such a new appointment is made, the consideration of the appeal, matter or question, or any hearing in connection with it, shall be begun afresh.
- (3) Nothing in sub-paragraph (2) above shall require any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

Certain acts and omissions of appointed person to be treated as those of the Secretary of State

7

- (1) Anything done or omitted to be done by an appointed person in, or in connection with, the exercise or purported exercise of any function to which the appointment relates shall be treated for all purposes as done or omitted to be done by the Secretary of State in his capacity as such.
- (2) Sub-paragraph (1) above shall not apply—
 - (a) for the purposes of so much of any contract made between the Secretary of State and the appointed person as relates to the exercise of the function; or

- (b) for the purposes of any criminal proceedings brought in respect of anything done or omitted to be done as mentioned in that sub-paragraph.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Para 4: sub-para (3)(a) repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (9).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Para 4: in sub-para (3)(b) word omitted repealed in relation to England and Wales by SI 2000/1973, reg 39, Sch 10, Pt 1, paras 14, 19(a); a corresponding repeal has been made in relation to Scotland by SSI 2000/323, reg 36, Sch 10, Pt 1, para 5(1), (5)(a).

Date in force (in relation to England and Wales): 1 August 2000: see SI 2000/1973, reg 1(1).

Date in force (in relation to Scotland): 28 September 2000: see SSI 2000/323, reg 1(1).

Para 4: sub-para (3)(d) and word omitted immediately preceding it inserted in relation to England and Wales by SI 2000/1973, reg 39, Sch 10, Pt 1, paras 14, 19(b); a corresponding amendment has been made in relation to Scotland by SSI 2000/323, reg 36, Sch 10, para 5(1), (5)(b).

Date in force (in relation to England and Wales): 1 August 2000: see SI 2000/1973, reg 1(1).

Date in force (in relation to Scotland): 28 September 2000: see SSI 2000/323, reg 1(1).

Para 4: in sub-para (3)(c) word omitted repealed by SSI 2006/181, art 2, Schedule, Pt IV, para 8(1), (6)(a).

Date in force: 1 April 2006: see SSI 2006/181, art 1.

Para 4: sub-para (3)(d) substituted in relation to England and Wales by SI 2010/675, reg 107, Sch 26, Pt 1, para 13(1), (7); corresponding amendments have been in relation to Scotland by SSI 2012/360, reg 72, Sch 11, Pt 1, para 2.

Date in force (in relation to England and Wales): 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).

Date in force (in relation to Scotland): 7 January 2013: see SSI 2012/360, reg 1(2).

Para 4: sub-para (3)(d) amended, in relation to Scotland, by SSI 2011/226, reg 3(1), (3).

Date in force: 27 March 2011: see SSI 2011/226, reg 1(1).

Para 4: sub-para (3)(e) and word "or" immediately preceding it inserted by SSI 2006/181, art 2, Schedule, Pt IV, para 8(1), (6)(b).

Date in force: 1 April 2006: see SSI 2006/181, art 1.

Para 5: in sub-para (1)(c) words "or the Natural Resources Body for Wales, as appropriate" in square brackets inserted by SI 2013/755, art 4(1), Sch 2, Pt 1, paras 361, 387.

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Transfer of Functions

Functions of the Secretary of State and the Minister, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

SCHEDULE 21

APPLICATION OF CERTAIN ENACTMENTS TO THE CROWN

Section 116

Part I

Enactments Relating to England and Wales

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NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Appointment (in part): 21 September 1995: see SI 1995/1983, art 3.

Appointment (in part except for the purposes of the application of the substituted Water Resources Act 1991, s 222 to that Act): 1 July 1997: see SI 1997/1626, art 2; for transitional provisions see art 3 thereof.

Appointment (in part): 8 April 1998: see SI 1998/781, art 2.

Appointment (in part): 1 December 2000: see SI 2000/3033, art 2.

Amendment

This Part substitutes the Water Industry Act 1991, s 221, and the Water Resources Act 1991, s 222, and contains amendments to the Water Resources Act 1991, ss 115, 142.

Part II

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NOTES

Amendment

Repealed by the Water Industry (Scotland) Act 2002, s 71(2), Sch 7, para 24(1), (3).

Date in force: 1 April 2002: see SSI 2002/118, art 2(3).

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NOTES

Amendment

Repealed by the Water Industry (Scotland) Act 2002, s 71(2), Sch 7, para 24(1), (3).

Date in force: 1 April 2002: see SSI 2002/118, art 2(3).

SCHEDULE 22 MINOR AND CONSEQUENTIAL AMENDMENTS

Section 120

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The Health and Safety at Work etc Act 1974

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(1) The Health and Safety at Work etc Act 1974 (in this paragraph referred to as “the 1974 Act”) shall have effect in accordance with the following provisions of this paragraph.

(2) The appropriate new Agency shall, in consequence of the transfer effected by virtue of section 2(2)(c) or, as the case may be, 21(2)(a) of this Act, be regarded for the purposes of Part I of the 1974 Act as the authority which is, by any of the relevant statutory provisions, made responsible in relation to England and Wales or, as the case may be, Scotland for the enforcement of the relevant enactments (and, accordingly, as the enforcing authority in relation to those enactments).

(3) Neither the Agency nor SEPA shall have power to appoint inspectors under section 19 of the 1974 Act.

(4) Sections 21 to 23 (improvement notices and prohibition notices) shall have effect in any case where the relevant statutory provision in question is any of the relevant enactments as if references in those sections to an inspector were references to the appropriate new Agency.

(5) Section 27 (obtaining of information by the Commission etc) shall have effect in relation to the appropriate new Agency, in its relevant capacity, as it has effect in relation to [the Health and Safety Executive] (and not as it has effect in relation to an enforcing authority), except that the consent of the Secretary of State shall not be required to the service by the appropriate new Agency of a notice under subsection (1) of that section; and, accordingly, where that section has effect by virtue of this subparagraph—

- (a) any reference in that section to the Commission shall be construed as a reference to the appropriate new Agency;
- (b) any reference to an enforcing authority shall be disregarded; and
- (c) in subsection (3) of that section, the words from “and also” onwards shall be disregarded.

(6), (7) . . .

(8) In this paragraph—

“the appropriate new Agency” means—

- (a) in relation to England and Wales, the Agency; and
- (b) in relation to Scotland, SEPA;

“relevant capacity”, in relation to the appropriate new Agency, means its capacity as the enforcing authority, for the purposes of Part I of the 1974 Act, which is responsible in relation to England and Wales or, as the case may be, Scotland for the enforcement of the relevant enactments;

“the relevant enactments” means the Alkali, &c, Works Regulation Act 1906 and section 5 of the 1974 Act;

“the relevant statutory provisions” has the same meaning as in Part I of the 1974 Act.

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The Clean Air Act 1993

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In section 60(7)(b) of that Act as it applies to Scotland for the words “the Secretary of State” and “Secretary of State’s” there shall be substituted the words “SEPA” and “SEPA’s” respectively.

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In section 63(1)(c) of that Act as it applies to Scotland for the words “sections 19(4) and” there shall be substituted the words “section”.

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Subordinate legislation and local statutory provisions

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(1) In any subordinate legislation or local statutory provisions, for any reference (however framed) to the National Rivers Authority, and for any reference which falls to be construed as such a reference, there shall be substituted a reference to the Agency.

(2) In any subordinate legislation, for any reference (however framed) to a relevant inspector, and for any reference which falls to be construed as such a reference, there shall be substituted a reference to the appropriate Agency.

(3) The provisions of this paragraph are subject to the other provisions of this Act and to any provision made under or by virtue of this Act.

(4) In this paragraph—

“the appropriate Agency” means—

(a) in relation to England and Wales, the Agency;

(b) in relation to Scotland, SEPA;

“local statutory provision” means—

(a) a provision of a local Act (including an Act confirming a provisional order);

(b) a provision of so much of any public general Act as has effect with respect to particular persons or works or with respect to particular provisions falling within any paragraph of this definition;

(c) a provision of an instrument made under any provision falling within paragraph (a) or (b) above;

(d) a provision of any other instrument which is in the nature of a local enactment;

“relevant inspector” means—

(i) the chief inspector for England and Wales constituted under section 16(3) of the Environmental Protection Act 1990;

(ii) the chief inspector for Scotland constituted under section 16(3) of that Act;

(iii) the chief inspector for England and Wales appointed under section 4(2)(a) of the Radioactive Substances Act 1993;

(iv) the chief inspector for Scotland appointed under section 4(2)(b) of that Act;

(v) the chief, or any other, inspector, within the meaning of the Alkali, &c, Works Regulation Act 1906;

(vi) an inspector appointed under section 19 of the Health and Safety at Work etc Act 1974 by the Secretary of State in his capacity as the enforcing authority responsible for the enforcement of the Alkali, &c, Works Regulation Act 1906 or section 5 of the said Act of 1974;

“subordinate legislation” has the same meaning as in the Interpretation Act 1978.

NOTES

Initial Commencement

Royal Assent

Para 76 (in part), para 135: Royal Assent: 19 July 1995: see s 125(3).

To be appointed

Paras 1–75, 76 (remainder), 77–134, 136–233: To be appointed: see s 125(3).

Appointment

Paras 1, 3, 5–12, 14, 17–26, 27 (in part), 28, 29 (in part), 30, 32–35, 37 (in part), 40, 41, 45, 46 (in part), 47–50, 52, 54–66, 68 (in part), 70 (in part), 72 (in part), 73 (in part), 75, 76 (in part), 77, 78, 83–87, 90, 93, 94, 96–101, 104–132, 134, 136, 140, 141, 144–146, 148–152, 154–160, 164–168, 171–181, 184, 185, 188–191, 193–212, 213 (in part), 214–222, 223 (in part), 224–231, 233: Appointment: 1 April 1996: see SI 1996/186, art 3; for savings in relation to para 68 see art 4 thereof.

Paras 2, 13, 36, 37 (in part), 43, 44, 102, 232 (in part): Appointment: 1 February 1996: see SI 1996/186, art 2.

Paras 4, 31, 42, 213(1), (2)(b), (3), 223(1)(c): Appointment: 28 July 1995: see SI 1995/1983, art 2.

Paras 15, 51 (in part), 53: Appointment: 12 October 1995: see SI 1995/2649, art 2(j)(i), (iii), (iv).

Paras 27(b), (c), 88, 95: Appointment (in relation to Scotland): 1 January 2005: see SSI 2004/541, art 2(a).

Paras 27(b), (c), 88, 95: Appointment (in relation to England and Wales): 15 May 2006: by virtue of SI 2006/934, art 2.

Para 29 (in part): Appointment (for the purpose of making regulations): 12 October 1995: see SI 1995/2649, art 2(j)(ii).

Para 29 (in part): Appointment (in relation to Scotland): 1 January 2001: see SSI 2000/433, art 2.

Para 29 (in part): Appointment (in relation to Scotland): 1 April 2003: see SSI 2003/206, art 2(a).

Paras 37 (in part), 38, 39, 76 (in part), 80 (in part), 133 (in part), 137–139, 147, 153, 182, 187 (in part), 192: Appointment: 21 September 1995: see SI 1995/1983, art 3.: Appointment: 21 September 1995: see SI 1995/1983, art 3.

Para 37 (in part): Appointment: 1 April 1998: see SI 1998/604, art 2.

Para 46 (remainder): Appointment: 23 December 1997: see SI 1997/3044, art 2.

Para 51, 80, 133, 187, 213 (remainder): Appointment: 1 April 1996: see SI 1996/186, art 3.

Paras 67, 103: Appointment (for certain purposes): 1 February 1996: see SI 1996/186, art 2.

Para 67: Appointment (for remaining purposes): 1 April 1999: see SI 1999/803, art 3.

Paras 68 (in part), 73 (remainder), 74: Appointment (for certain purposes): 1 April 1996: see SI 1996/186, art 3; for savings in relation to para 68 see art 4 thereof.

Para 68 (in part): Appointment (for remaining purposes): 1 April 1998: see SI 1998/604, art 2.

Para 68 (remainder): Appointment: 1 April 1998: see SI 1998/604, art 2.

Para 69: Appointment (for the purpose of making regulations): 1 April 1998: see SI 1998/604, art 2.

Para 69: Appointment (for remaining purposes): 1 April 1999: see SI 1999/803, art 3.

Para 70: Appointment (remainder): 1 April 1999: see SI 1999/803, art 3.

Para 71: Appointment (for the purpose of making regulations): 1 April 1998: see SI 1998/604, art 2.

Para 71: Appointment (for remaining purposes): 1 April 1999: see SI 1999/803, art 3.

Para 72 (in part): Appointment (for the purpose of making regulations): 1 April 1998: see SI 1998/604, art 2.

Para 72 (in part): Appointment (for remaining purposes): 1 April 1999: see SI 1999/803, art 3.

Para 72 (remainder): Appointment: 1 April 1999: see SI 1999/803, art 3.

Para 73 (remainder): Appointment (for remaining purposes): 1 April 1998: see SI 1998/604, art 2.

Para 74: Appointment (for remaining purposes): 1 April 1998: see SI 1998/604, art 2.

Para 76: Appointment (remainder): 1 April 1998: see SI 1998/604, art 2.

Paras 79, 89, 91, 92: Appointment (in relation to England): 1 April 2000: see SI 2000/340, art 2(b).

Paras 79, 89, 91, 92: Appointment (in relation to Scotland): 14 July 2000: see SSI 2000/180, art 2(1)(b).

Paras 79, 89, 91, 92: Appointment (in relation to Wales): 15 September 2001: see SI 2001/3211, art 2(b).

Paras 82 (in part), 162: Appointment (for the purpose of making regulations): 21 September 1995: see SI 1995/1983, art 3.

Para 82 (in part): Appointment (for remaining purposes): 1 April 1996: see SI 1996/186, art 3.

Para 82 (remainder): Appointment: 1 April 1996: see SI 1996/186, art 3.

Para 88: Appointment (in relation to Scotland for certain purposes): 1 April 2003: see SSI 2003/206, art 2(b).

Para 103: Appointment (for remaining purposes): 1 April 1996: see SI 1996/186, art 3.

Paras 142, 143, 169, 170, 183: Appointment (for certain purposes): 21 November 1996: see SI 1996/2909, art 2.

Paras 142, 143, 169, 170: Appointment (for remaining purposes): 31 December 1996: see SI 1996/2909, art 3.

Para 161: Appointment: 29 April 1999: see SI 1999/1301, art 2.

Para 162: Appointment (in so far as it confers power to make regulations): 16 March 1999: see SI 1999/803, art 2.

Para 162: Appointment (for remaining purposes): 29 April 1999: see SI 1999/1301, art 2.

Para 163: Appointment: 29 April 1999: see SI 1999/1301, art 2.

Para 183: Appointment (for remaining purposes): 31 December 1996: see SI 1996/2909, art 3; for savings see art 4 thereof.

Amendment

Paras 1–15: amend the Alkali, &c, Works Regulation Act 1906, the Statistics of Trade Act 1947, the Rivers (Prevention of Pollution) (Scotland) Act 1951, the Public Records Act 1958, the Opencast Coal Act 1958, the Rivers (Prevention of Pollution) (Scotland) Act 1965, the Nuclear Installations Act 1965, the Parliamentary Commissioner Act 1967, the Sewerage (Scotland) Act 1968, the Local Authorities (Goods and Services) Act 1970, the Agriculture Act 1970, and the Prevention of Oil Pollution Act 1971.

Para 1: repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (10)(a).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Para 1: repealed in part by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Para 3: repealed in part by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Paras 7–9: repealed by the Energy Act 2013, s 116, Sch 12, Pt 2, para 30.

Date in force: 1 April 2014: see SI 2014/251, art 4(1).

Para 11: repealed in part by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Para 12: repealed in part by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Para 16: repealed by the Planning (Consequential Provisions) (Scotland) Act 1997, s 3, Sch 1, Part I.

Para 17: amends the Local Government Act 1972, s 223(2).

Para 17: repealed in part by the Police Act 1997, s 134(2), Sch 10.

Date in force: 1 April 1998: see SI 1998/354, art 2(2)(bc).

Paras 18, 28, 29: amend the Local Government Act 1974 and the Control of Pollution Act 1974.

Para 19: repealed in part by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Paras 19, 20–24, 26, 27, 46(11)(a), 182, 231: amend the Control of Pollution Act 1974, the Environmental Protection Act 1990 and the Local Government (Wales) Act 1994; repealed by s 120 of, and Sch 24 to, this Act, as from a day to be appointed.

Para 25: repealed by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Para 29: repealed in part by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Para 29: amended, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (10)(b).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Para 30: in sub-para (5) words “the Health and Safety Executive” in square brackets substituted by SI 2008/960, art 22, Sch 3.

Date in force: 1 April 2008: see SI 2008/960, art 1; for transitional provisions see art 21, Sch 2 thereof.

Para 30: sub-paras (6), (7) amend the Health and Safety at Work etc Act 1974, ss 28, 38.

Paras 31–34, 36, 37, 40–44, 62, 64–74, 76, 77, 79–83, 86, 88, 89, 91–93, 95–113, 115, 117–128, 130, 132–135, 139–145, 147, 150, 151, 157–167, 169, 170, 172, 173, 177, 180, 182–194: amend the House of Commons Disqualification Act 1975, the Northern Ireland Assembly Disqualification Act 1975, the Local Government (Scotland) Act 1975, the Local Government (Miscellaneous Provisions) Act 1976, the Water (Scotland) Act 1980, the Road Traffic Regulation Act 1984, the Control of Pollution (Amendment) Act 1989, the Electricity Act 1989, Sch 4, the Town and Country Planning Act 1990, the Environmental Protection Act 1990, the Natural Heritage (Scotland) Act 1991, the Water Industry Act 1991, the Water Resources Act 1991, and the Land Drainage Act 1991.

Para 34: repealed in part by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Para 35: repealed by the Crime and Punishment (Scotland) Act 1997, s 62(2), Sch 3.

Para 37: repealed in part by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Paras 38, 39: repealed by the Utilities Act 2000, s 108, Sch 8.
Date in force: 1 October 2001: see SI 2001/3266, art 2, Schedule.

Paras 45–61: amend the Environmental Protection Act 1990.

Paras 63, 75, 78, 84, 85, 87, 90, 94, 116, 129, 131, 136–138, 146, 148, 149, 152–156, 168, 171, 174–176, 178, 179, 201, 207, 216, 218, 221, 225, 226, 229: repealed by the Statute Law (Repeals) Act 2004.
Date in force: 22 July 2004: (no specific commencement provision).

Paras 66–74, 76, 77, 82, 83: repealed, in relation to England and Wales, by SI 2007/3538, reg 74(2), Sch 23.
Date in force: 6 April 2008: see SI 2007/3538, reg 1(1)(b); for savings see reg 72(2), (10) thereof.

Para 93: repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (10)(c).
Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Para 96: repealed in part, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (10)(d).
Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Para 114: amends the Water Industry Act 1991, s 142.

Para 114: repealed in part by the Water Industry Act 1999, s 15(2), Sch 4, Pt I.
Date in force: 1 April 2000: see SI 1999/3440, art 3(e).

Paras 142, 143: repealed, in relation to England and Wales, by SI 2010/675, reg 109, Sch 28.
Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).

Para 177: repealed in part, in relation to England and Wales, by SI 2010/675, reg 109, Sch 28.
Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).

Para 181: repealed by the Water Act 2003, s 101, Sch 7, Pt 1, para 15(1), (3), Sch 9, Pt 3.
Date in force: 1 April 2006: by virtue of SI 2006/984, art 2(s)(i).

Paras 182, 183: repealed, in relation to England and Wales, by SI 2010/675, reg 109, Sch 28.
Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).

Para 186: repealed, in relation to England and Wales, by SI 2010/675, reg 109, Sch 28.
Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).

Paras 195–199: amend the Clean Air Act 1993, ss 2, 19, 59, 60, 63.

Paras 200, 202–206, 208–215, 217, 219, 220, 222–224, 227, 228, 230: amend the Radioactive Substances Act 1993.

Paras 200–223: repealed, in relation to England and Wales, by SI 2010/675, reg 109, Sch 28.
Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).

Para 205: repealed in part by the Food Standards Act 1999, s 40(4), Sch 6.
Date in force: 1 April 2000: see SI 2000/1066, art 2.

Para 206: repealed in part by the Food Standards Act 1999, s 40(4), Sch 6.
Date in force: 1 April 2000: see SI 2000/1066, art 2.

Para 211: repealed in part by the Food Standards Act 1999, s 40(4), Sch 6.
Date in force: 1 April 2000: see SI 2000/1066, art 2.

Para 212: repealed in part by the Food Standards Act 1999, s 40(4), Sch 6.
Date in force: 1 April 2000: see SI 2000/1066, art 2.

Para 213: repealed in part by the Food Standards Act 1999, s 40(4), Sch 6.
Date in force: 1 April 2000: see SI 2000/1066, art 2.

Paras 225–229: repealed, in relation to England and Wales, by SI 2010/675, reg 109, Sch 28.

Date in force: 6 April 2010 (immediately after the coming into force of the Environmental Permitting (England and Wales) (Amendment) (No 2) Regulations 2009, SI 2009/3381): see SI 2010/675, reg 1(1)(b).
Para 232: amends the Local Government etc (Scotland) Act 1994.

SCHEDULE 23

TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS

Section 120

Part I

General Transitional Provisions and Savings

Interpretation of Part I

1

In this Part of this Schedule, the “transfer date” has the same meaning as in Part I of this Act.

Directions

2

Any directions given to the National Rivers Authority for the purposes of section 19 of the Water Resources Act 1991 shall have effect on and after the transfer date as directions given to the Agency for the purposes of section 6(2) of this Act.

. . .

3

. . .

Charging schemes

4

(1) *Without prejudice to section 55 of this Act, any charging scheme—*

- (a) *which relates to any transferred functions,*
- (b) *which was made before the transfer date, and*
- (c) *which is in force immediately before that date or would (apart from this Act) have come into force at any time after that date,*

shall, subject to the provisions of section 41 of this Act, have effect on and after the transfer date, with any necessary modifications, and for the remainder of the period for which the charging scheme would have been in force apart from any repeal made by this Act, as a scheme made under that section by the transferee in accordance with section 42 of this Act.

(2) *Any costs or expenses incurred before the transfer date by any person in carrying out functions transferred to a new Agency by or under this Act may be treated for the purposes of subsections (3) and (4) of section 42 of this Act as costs or expenses incurred by that new Agency in carrying out those functions.*

(3) *In this paragraph—*

“charging scheme” means a scheme specifying, or providing for the determination of, any fees or charges;

“new Agency” means the Agency or SEPA;

“transferred functions” means any functions which, by virtue of any provision made by or under this Act, become functions of a new Agency and “the transferee” means the new Agency whose functions they so become.

...

5

...

Preparation of accounts

6

Notwithstanding the repeal by this Act of subsection (9) of section 135 of the Local Government (Scotland) Act 1973 (application to river purification board of certain provisions of that Act), the provisions applied to a river purification board by virtue of that section shall, as respects the period between the end of the last financial year in respect of which accounts have been made up by the board and the transfer date, continue to apply in relation to the board; but anything which shall or may be done or enjoyed, or any access, inspection or copying which shall or may be allowed, under or by virtue of any of those provisions or of section 118 of that Act (financial returns) by, or by an officer of, the board shall, or as the case may be may, after the transfer date, be done, enjoyed or allowed by, or by an officer of, SEPA in place of the board or of an officer of the board.

Membership of Welsh National Park authorities

7

(1) Where a body corporate constituted as a Welsh National Park planning board becomes, or has become, the National Park authority in relation to the National Park in question by virtue of an order under section 63 of this Act made by virtue of section 64(1) of this Act, paragraph 2 of Schedule 7 to this Act shall, in its application in relation to that National Park authority at any time before 31st March 1997, have effect with the following modifications.

(2) In sub-paragraph (5)—

(a) in paragraph (a), after the word “council” there shall be inserted the words “or, if earlier, until the council which appointed him as a local authority member of that authority is excluded from the councils by whom such members of that authority are to be appointed”; and

(b) in paragraph (b), after the word “cessation” there shall be inserted the words “or exclusion”.

(3) In sub-paragraph (6), after the words “Sub-paragraph (5)(a) above” there shall be inserted the words “, so far as relating to cessation of membership of a council,”.

(4) In this paragraph, “Welsh National Park planning board” means a National Park planning board, as defined in section 64 of this Act, for the area of a National Park in Wales.

The Alkali, &c, Works Regulation Act 1906

8

Any dispensation which was granted under the proviso to subsection (5) of section 9 of the Alkali, &c, Works Regulation Act 1906 before the transfer date and which would, apart from this Act, have been in force on that date shall have effect on and after that date notwithstanding the repeal of that proviso by this Act.

The Public Records Act 1958

9

(1) Such of the administrative and departmental records (in whatever form or medium) of a transferor as are transferred to and vested in the Agency by or under section 3 of this Act shall be treated for the purposes of the Public Records Act 1958 as administrative or departmental records of the Agency.

(2) In this paragraph, “transferor” means any body or person any or all of whose administrative and departmental records are transferred to and vested in the Agency by or under section 3 of this Act.

The Parliamentary Commissioner Act 1967

10

(1) Nothing in this Act shall prevent the completion on or after the transfer date of any investigation begun before that date under the Parliamentary Commissioner Act 1967 in pursuance of a complaint made in relation to the National Rivers Authority.

(2) Nothing in this Act shall prevent the making on or after the transfer date of a complaint under that Act in respect of any action which was taken by or on behalf of the National Rivers Authority before that date.

(3) Notwithstanding the amendment of that Act by paragraph 11 of Schedule 22 to this Act, the provisions of that Act shall have effect on and after the transfer date in relation to any complaint to which sub-paragraph (1) or (2) above applies and to its investigation as they would have had effect before that date; but, in relation to any such complaint, the Agency shall on and after that date stand in the place of the National Rivers Authority for the purposes of this paragraph.

The Local Government Act 1974

11

(1) Where for any year, a Rate Support Grant Report under section 60 of the Local Government, Planning and Land Act 1980, or a supplementary report under section 61 of that Act, has effect to determine the amount of supplementary grants to be paid under section 7 of the Local Government Act 1974 to the council of a county or county borough in Wales, and at any time—

- (a) after that report or, as the case may be, that supplementary report is approved by a resolution of the House of Commons, but
- (b) not later than the end of that year,

a body corporate constituted as a National Park planning board for a National Park the whole or any part of which is included in that county or county borough becomes the National Park authority for that National Park by virtue of section 64 of this Act, those supplementary grants shall, subject to the provisions of any, or any further, such supplementary report, continue to be paid for that year notwithstanding that that body corporate has ceased to be a National Park planning board.

(2) In this paragraph—

“National Park planning board” has the meaning given by section 64(9) of this Act; and

“year” means a period of 12 months beginning with 1st April.

12

(1) Nothing in this Act shall prevent the completion on or after the transfer date by a Local Commissioner of any investigation which he began to conduct before that date and which is an investigation under Part III of the Local Government Act 1974 in pursuance of a complaint made in relation to the National Rivers Authority.

(2) Nothing in this Act shall prevent the making on or after the transfer date of a complaint under Part III of that Act in respect of any action which was taken by or on behalf of the National Rivers Authority before that date.

(3) Notwithstanding the amendment of Part III of that Act by paragraph 18 of Schedule 22 to this Act, the provisions of that Part shall have effect on and after the transfer date in relation to any complaint to which sub-paragraph (1) or (2) above applies and to its investigation as they would have had effect before that date; but, in relation to any such complaint, the Agency shall on and after that date stand in the place of the National Rivers Authority for the purposes of this paragraph.

The Control of Pollution Act 1974

13

As respects England and Wales, any resolution passed in pursuance of section 11 of the Control of Pollution Act 1974 (special provision for land occupied by disposal authorities: resolutions etc) which is in force immediately before the day on which the repeals in that section made by this Act come into force shall have effect on and after that day as if it were a waste management licence granted by the Environment Agency under Part II of the Environmental Protection Act 1990 subject to the conditions specified in the resolution pursuant to subsection (3)(e) of that section.

The Salmon and Freshwater Fisheries Act 1975

14

(1) Any approval or certificate given under or by virtue of section 8(2), 9(1) or 11(4) of the Salmon and Freshwater Fisheries Act 1975 by a Minister of the Crown before the transfer date shall, so far as is required for continuing its effect on and after that date, have effect as if given by the Agency.

(2) Any application for the grant of an approval or certificate by a Minister of the Crown under or by virtue of any of the provisions specified in sub-paragraph (1) above which, at the transfer date, is in the process of being determined shall on and after that date be treated as having been made to the Agency.

(3) Any notice given by a Minister of the Crown under section 11(2) of that Act before the transfer date shall, so far as is required for continuing its effect on and after that date, have effect as if given by the Agency.

(4) Any extension of a period granted by a Minister of the Crown under section 11(3) of that Act before the transfer date shall, so far as is required for continuing its effect on and after that date, have effect as if granted by the Agency.

(5) Without prejudice to section 16 or 17 of the Interpretation Act 1978, any exemption granted under subsection (1) or (2) of section 14 of the Salmon and Freshwater Fisheries Act 1975 which is in force

immediately before the substitution date shall have effect on and after that date as an exemption granted by the Agency under subsection (2) or, as the case may be, subsection (3) of section 14 of that Act as substituted by paragraph 13 of Schedule 15 to this Act.

(6) Any grating constructed and placed in a manner and position approved under section 14(3) of that Act as it had effect before the substitution date (including a grating so constructed and placed at any time as a replacement for a grating so constructed and placed) shall, if—

- (a) the approval was in force immediately before the substitution date, and
- (b) the grating is maintained in accordance with the approval,

be taken for the purposes of section 14 of that Act, as substituted by paragraph 13 of Schedule 15 to this Act, to be a screen which complies with the requirements of subsection (2)(a) or (3)(a) of that section, according to the location of the grating, and with the requirements of subsections (4) to (6) of that section.

(7) Any notice given, or objection made, under subsection (2) of section 18 of that Act before the transfer date shall, so far as is required for continuing its effect on and after that date, have effect as a notice given under that subsection as it has effect on and after that date.

(8) In this paragraph—

“approval” includes a provisional approval;

“grating” means a device in respect of which there is in force, immediately before the substitution date, an approval given for the purposes of the definition of “grating” in section 41(1) of the Salmon and Freshwater Fisheries Act 1975 as it had effect before that date;

“the substitution date” means the date on which paragraph 13 of Schedule 15 to this Act comes into force;

“the transfer date” means the date which, by virtue of section 56(1) of this Act, is the transfer date for the purposes of Part I of this Act as it applies in relation to the Agency.

The Local Government Finance Act 1988

15

(1) Without prejudice to the generality of subsection (4) of section 64 of this Act, where an order has been made under section 63 of this Act by virtue of section 64(1) of this Act designating a date in relation to a Welsh National Park planning board, the body corporate constituted as that board may at any time before the designated date issue a levy by virtue of section 71 of this Act for a year at or before the beginning of which that body becomes the National Park authority for the National Park in question by virtue of section 64 of this Act as if it were the National Park authority for that National Park, notwithstanding that it has not in fact become a National Park authority at the date when it issues the levy.

(2) Without prejudice to the generality of section 74 of the Local Government Finance Act 1988, where—

- (a) an order is made under section 63 of this Act by virtue of section 64(1) of this Act designating a date in relation to a Welsh National Park planning board; and
- (b) the designated date is a date falling after the beginning, but before the end, of a year in respect of which, at the time the order is made, that board has not issued any levy under that section 74,

that board may nonetheless issue such a levy in respect of that year as if the body corporate constituted

as that board was not in fact going to become the National Park authority for the National Park in question by virtue of that order before the end of that year.

(3) Sub-paragraph (5) below applies in a case where a levy is issued in respect of any year by a Welsh National Park planning board under section 74 of the Local Government Finance Act 1988 and—

- (a) that levy is issued by that board at a time when no order has been made under section 63 of this Act by virtue of section 64(1) of this Act designating a date in relation to that board; and
- (b) after the levy is issued, but no later than the end of the year in respect of which it is issued, such an order is so made designating in relation to that board a date falling not later than the end of that year.

(4) Sub-paragraph (5) below also applies in a case where a levy is issued in respect of any year by a Welsh National Park planning board under section 74 of the Local Government Finance Act 1988 and—

- (a) that levy is issued by that board at a time after an order has been made under section 63 of this Act by virtue of section 64(1) of this Act designating a date in relation to that board; and
- (b) the designated date is a date falling after the beginning, but before the end, of that year.

(5) In a case where this sub-paragraph applies, the levy in question or any levy substituted for that levy—

- (a) shall have effect or, as the case may be, continue to have effect; and
- (b) in particular, but without prejudice to the generality of paragraph (a) above, shall be paid or, as the case may be, continue to be paid,

as if the body corporate constituted as that board was not to, or had not, so become the National Park authority for the National Park in question (but was to continue, or had continued, to be the National Park planning board for that Park for the whole of that year).

(6) Where a body corporate constituted as a Welsh National Park planning board has or is to become the National Park authority for the National Park in question by virtue of an order made under section 63 of this Act by virtue of section 64(1) of this Act, nothing in this paragraph authorises that body corporate to issue for any year both a levy under section 74 of the Local Government Finance Act 1988 and a levy by virtue of section 71 of this Act.

(7) In this paragraph—

“the designated date” has the same meaning as in section 64 of this Act;

“National Park planning board” has the meaning given by section 64(9) of this Act;

“Welsh National Park planning board” means a National Park planning board for the area of a National Park in Wales;

“year” means a period of 12 months beginning with 1st April;

and any reference to the issue of a levy under section 74 of the Local Government Finance Act 1988 by a Welsh National Park planning board is a reference to the issue of a levy under that section by such a board by virtue of subsection (7) of that section.

The Environmental Protection Act 1990

(1) Subject to sub-paragraph (2) below, if, at the transfer date, the content of the strategy required by section 44A of the Environmental Protection Act 1990 has not been finally determined, any plan or modification under section 50 of that Act, in its application to England and Wales, whose content has been finally determined before that date shall continue in force until the contents of the strategy are finally determined, notwithstanding the repeal by this Act of that section.

(2) If the strategy required by section 44A of that Act consists, or is to consist, of more than one statement, sub-paragraph (1) above shall apply as if—

- (a) references to the strategy were references to any such statement; and
- (b) references to a plan or modification under section 50 of that Act were references to such plans or modifications as relate to the area covered, or to be covered, by that statement.

17

If, at the transfer date, the content of the strategy required by section 44B of that Act has not been finally determined, any plan or modification under section 50 of that Act, in its application to Scotland, whose content has been finally determined before that date shall continue in force until the contents of the strategy are finally determined, notwithstanding the repeal by this Act of that section.

18

(1) *This paragraph applies to—*

- (a) *any resolution of a waste regulation authority under section 54 of that Act (special provision for land occupied by disposal authorities in Scotland);*
- (b) *any resolution of a waste disposal authority having effect by virtue of subsection (16) of that section as if it were a resolution of a waste regulation authority under that section,*

which is in force on the transfer date.

(2) *A resolution to which this paragraph applies shall continue in force—*

- (a) *where no application is made under section 36(1) of that Act for a waste management licence in respect of the site or mobile plant covered by the resolution, until the end of the period of 6 months commencing with the transfer date;*
- (b) *where an application as mentioned in sub-paragraph (a) above is made, until—*
 - (i) *the application is withdrawn;*
 - (ii) *the application is rejected and no appeal against the rejection is timeously lodged under section 43 of that Act;*
 - (iii) *any appeal against a rejection of the application is withdrawn or rejected;*

or

 - (iv) *the application is granted.*

(3) *In relation to a resolution continued in force by sub-paragraph (2) above, the said section 54 shall have effect subject to the amendments set out in the following provisions of this paragraph.*

(4) *In subsection (2), for paragraph (b) there shall be substituted—*

[ISOB

“(b) specified in a resolution passed by a waste regulation authority, or by a waste disposal authority under Part I of the Control of Pollution Act 1974, before the transfer date within the meaning of section 56(1) of the Environment Act 1995”.

[ISOE

(5) In subsection (3) for paragraph (b) there shall be substituted—

[ISOB

“(b) by another person, that it is on land which is the subject of a resolution, that it is with the consent of the waste disposal authority and that any conditions to which such consent is subject are within the terms of the resolution.”

[ISOE

(6) Subsections (4) to (7) shall cease to have effect.

(7) For subsections (8) and (9) there shall be substituted—

[ISOB

“(8) Subject to subsection (9) below, a resolution continued in force by paragraph 18 of Schedule 23 to the Environment Act 1995 may be varied or rescinded by SEPA by a resolution passed by it.

(9) Before passing a resolution under subsection (8) above varying a resolution, SEPA shall—

- (a) prepare a statement of the variation which it proposes to make;*
- (b) refer that statement to the Health and Safety Executive and to the waste disposal authority in whose area the site is situated or, as the case may be, which is operating the plant; and*
- (c) consider any representations about the variation which the Health and Safety Executive or the waste disposal authority makes to it during the allowed period.*

(9A) The period allowed to the Health and Safety Executive and the waste disposal authority for the making of representations under subsection (9)(c) above is the period of 28 days beginning with that on which the statement is received by that body, or such longer period as SEPA and that body agree in writing.

(9B) SEPA may—

- (a) postpone the reference under subsection (9)(b) above so far as it considers that by reason of an emergency it is appropriate to do so;*
- (b) disregard the Health and Safety Executive in relation to a resolution which in SEPA's opinion will not affect the Health and Safety Executive.”*

[ISOE

(8) In subsection (10)—

- (a) for the words “the authority which passed the resolution” and “the waste regulation authority” there shall be substituted the words “SEPA”;*
- (b) the words “the waste disposal authority to discontinue the activities and of” shall cease to*

have effect.

- (9) *Subsections (11) to (15) shall cease to have effect.*

The Water Industry Act 1991

19

(1) Where, before the coming into force of the repeal by this Act of section 151 of the Water Industry Act 1991 (financial contributions to rural services), the Secretary of State has received an application from a relevant undertaker for a contribution under that section, he may, notwithstanding the coming into force of that repeal—

- (a) give any such undertaking for any contribution sought by that application as he could have given under that section prior to the coming into force of that repeal;
- (b) make any payments provided for in an undertaking given by virtue of this sub-paragraph.

(2) Notwithstanding the coming into force of the repeal by this Act of that section—

- (a) the Secretary of State may make any payments provided for in an undertaking given by him under that section prior to the coming into force of that repeal;
- (b) subsection (4) of that section (withholding and reduction of contributions) shall—
 - (i) continue to have effect in relation to contributions which the Secretary of State, before that repeal of that section, gave an undertaking under that section to make; and
 - (ii) have effect in relation to contributions which the Secretary of State has, by virtue of sub-paragraph (1) above, undertaken to make.

The Water Resources Act 1991

20

Notwithstanding any provision restricting the power of the Agency to grant a licence under Chapter II of Part II of the Water Resources Act 1991 (abstracting or impounding of water), or the power of the Secretary of State to direct the Agency to grant such a licence, the Agency may grant, and the Secretary of State may direct it to grant, such licences as are necessary to ensure that water may continue to be abstracted or impounded by or on behalf of the Crown in the manner in which, and to the extent to which,—

- (a) it may be so abstracted or impounded immediately before the coming into force of sub-paragraph (4) of paragraph 2 of Schedule 21 to this Act in relation to that Chapter, or
- (b) it has been so abstracted or impounded at any time in the period of five years immediately preceding the coming into force of that sub-paragraph in relation to that Chapter.

21

(1) This paragraph applies to any consent—

- (a) which was given under paragraph 2 of Schedule 10 to the Water Resources Act 1991 (discharge consents), as in force before the transfer date; and
- (b) which is in force immediately before that date.

- (2) On and after the transfer date, a consent to which this paragraph applies—
- (a) shall, for so long as it would have continued in force apart from this Act, have effect as a consent given under paragraph 3 of Schedule 10 to that Act, as substituted by this Act, subject to the same conditions as were attached to the consent immediately before the transfer date; and
- (b) shall—
- (i) during the period of six months beginning with the transfer date, not be limited to discharges by any particular person but extend to discharges made by any person; and
- (ii) after that period, extend, but be limited, to discharges made by any person who before the end of that period gives notice to the Agency that he proposes to rely on the consent after that period.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Paras 1–6, 8–10, 12, 13, 14(1)–(4), (7), 16–21: Appointment: 1 April 1996: see SI 1996/186, art 3.

Para 14(5), (6), (8) (in part): Appointment: 1 January 1999: see SI 1995/1983, art 4.

Para 14(8) (remainder): Appointment: 1 April 1996: see SI 1996/186, art 3.

Amendment

Para 3: repealed by SI 2013/755, art 9(1)(b), (2)(d).

Date in force: 1 April 2013: see SI 2013/755, art 1(2); for transitional provisions and savings see art 10, Sch 7 thereto.

Para 4: repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (11)(a).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Para 5: repealed by the Statute Law (Repeals) Act 2004.

Date in force: 22 July 2004: (no specific commencement provision).

Para 6: repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (11)(b).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Para 8: repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (11)(c).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Para 18: repealed, in relation to Scotland, by the Regulatory Reform (Scotland) Act 2014, s 57, Sch 3, Pt 5, para 29(1), (11)(d).

Date in force: 30 June 2014: see SSI 2014/160, art 2(1), (2), Schedule.

Part II

Transitory Provisions in Respect of Flood Defence

Disqualification for membership of regional flood defence committee

22

Where a person is disqualified for membership of a regional flood defence committee by virtue of having been adjudged bankrupt before the coming into force of the Insolvency Act 1986, the rules applicable apart from the repeals made by the Consequential Provisions Act or this Act, rather than paragraph 3(2) of Schedule 5 to this Act, shall apply for determining when that disqualification shall cease.

Savings in relation to local flood defence schemes

23

- (1) In any case where—
- (a) immediately before the coming into force of section 17 of this Act, any scheme or committee continues, by virtue of paragraph 14 of Schedule 2 to the Consequential Provisions Act, to be treated as a local flood defence scheme or a local flood defence committee, or
 - (b) immediately before the coming into force of section 18 of this Act, any person continues, by virtue of that paragraph, to hold office,

the scheme or committee shall continue to be so treated or, as the case may be, the person shall continue so to hold office, notwithstanding the provisions of section 18 of, or Schedule 5 to, this Act or the repeal of any enactment by this Act.

- (2) Where a person is disqualified for membership of a local flood defence committee by virtue of having been adjudged bankrupt before the coming into force of the Insolvency Act 1986, the rules applicable apart from the repeals made by the Consequential Provisions Act or this Act, rather than paragraph 3(2) of Schedule 5 to this Act, shall apply for determining when that disqualification shall cease.

Interpretation

24

In this Part of this Schedule, “the Consequential Provisions Act” means the Water Consolidation (Consequential Provisions) Act 1991.

NOTES

Initial Commencement

To be appointed

To be appointed: see s 125(3).

Appointment

Paras 22–24: Appointment: 1 April 1996: see SI 1996/186, art 3.

**SCHEDULE 24
REPEALS AND REVOCATIONS**

Section 120

[FTB

Reference	Short title or title	Extent of repeal or revocation
...
		<i>Sections 36 and 37.</i>
6 Edw 7 c 14	The Alkali, &c, Works Regulation Act 1906	In section 9, the proviso to subsection (5). Section 25. In section 27(1) the

		<p>definitions of the expressions “chief inspector” and “inspector”.</p> <p>In section 28(b), the words “other than offences under subsection four of section twelve of this Act”, in sub-paragraph (ii), the words from “without the consent” to “direct, nor”; and sub-paragraph (iii).</p>
12, 13 & 14 Geo 6 c 97	The National Parks and Access to the Countryside Act 1949	<p>In section 6(6), the words from “or a local planning authority” to “part of a National Park”.</p> <p>Section 11.</p> <p>In section 11A(6)(b), the words “district council”.</p> <p>Section 12(2).</p> <p>In section 13(1), the words “and within the area of the authority”.</p>
14 & 15 Geo 6 c 66	The Rivers (Prevention of Pollution) (Scotland) Act 1951	<p>Part II.</p> <p>Section 17.</p> <p>In section 18, in subsection (1), the words “of their area”, “in their area” (where first occurring and “in their area or any part thereof”; and in subsection (3) , the words “in their area” and the words from “whose” to “authority” where next occurring.</p> <p>In section 19, in subsection (1), the words “in the area of the authority”, subsections (2) to (2B) and, in subsection (4), the words from “any”, where first</p>

		occurring, to “and”, where last occurring.
		In section 35, the definitions of “river purification authority”, “river purification board” and “river purification board area”.
2 & 3 Eliz 2 c 70	The Mines and Quarries Act 1954	Section 151(5).
8 & 9 Eliz 2 c 62	The Caravan Sites and Control of Development Act 1960	In section 24(8), the words from “and a joint planning board” to “such a National Park”.
1965 c 13	The Rivers (Prevention of Pollution) (Scotland) Act 1965	Section 10(6)(a).
1965 c 57	The Nuclear Installations Act 1965	In section 3(3)(b), the words “the National Rivers Authority,”.
1967 c 13	The Parliamentary Commissioner Act 1967	In Schedule 2, the entry relating to the National Rivers Authority and the note 9 inserted by paragraph 11 of Schedule 1 to the Water Act 1989.
1967 c 22	The Agriculture Act 1967	In section 50(3), paragraph (e) and the words from “and “National Parks planning authority” means” onwards.
1968 c 41	The Countryside Act 1968	In section 6(2), paragraph (c) and the word “or” immediately preceding it.
		Section 13(11).
		Section 40.
		In section 42(1), the words “whether or not within the area of the local planning authority”.
		In section 47A—

		(a) in subsection (2), the word “18”; and
		(b) subsection (4).
1968 c 47	The Sewerage (Scotland) Act 1968	In section 38(3), the words “river purification authorities”. Section 49. In section 59(1), the definition of “river purification authority”.
1968 c 59	The Hovercraft Act 1968	In section 1(1)(g), the words “Part III of the Control of Pollution Act 1974 or”.
1970 c 40	The Agriculture Act 1970	In section 92(1), the words “for their area” and “both within (and in the case of a river purification board) outwith, that area”. Section 92(2)(c).
1972 c 52	The Town and Country Planning (Scotland) Act 1972	Section 251A.
1972 c 70	The Local Government Act 1972	Section 101(9)(h). In section 140A(2), in the definition of “local authority”, the words “or reconstituted in pursuance of Schedule 17 to this Act”. In section 184—
		(a) in subsection (2), the words “and Schedule 17 to this Act”;
		(b) in

		subsection (4), the words "subject to Schedule 17 of this Act"; and
		(c) subsection (6).
		In section 223(2), the words "and the National Rivers Authority".
		In Schedule 16, paragraph 55(2).
		Part I of Schedule 17.
1972 c v	The Clyde River Purification Act 1972	The whole Act.
1973 c 65	The Local Government (Scotland) Act 1973	Sections 135 and 135A.
		Section 200.
		In Schedule 16, paragraphs 1 to 5 and 7 to 10.
		In Schedule 27, in Part II, paragraphs 30 to 32, 37 and 38.
1974 c 7	The Local Government Act 1974	Section 7.
1974 c 37	The Health and Safety at Work etc Act 1974	In section 28, in subsection (3)(c)(ii), so far as extending to England and Wales, the words "of the National Rivers Authority or" and the word "Authority" (where next occurring), subsection (3)(c)(iii) and, in subsection (5)(b), so far as extending to England and Wales, the words "the National Rivers Authority".
1974 c 40	The Control of Pollution Act 1974	In section 5, in subsection (4), the words

following paragraph (b),
and subsection (5).

In section 7, in
subsections (1) and (4),
the words “issued by a
disposal authority” and,
in subsection (2), the
words “or, in relation to
Scotland, subsection
(5)”.

In section 9(4), the
words “issued by the
authority”.

In section 11,
subsections (1) to (11).

In section 30(1), the
words from “and for the
purposes” to the end.

In section 30A(2)(a), the
words “in the area of that
authority”.

In section 30C, in
subsection (1), the words
“within the area of that
authority”; and in each of
subsections (4) and (6),
the words “in the area of
a river purification
authority”.

In section 31,
subsections (1) to (3), in
subsection (6), the words
“in its area” and
subsections (7), and
(10).

Section 31D.

Section 32.

In section 33(1), the
words “in the area of the
authority”.

In section 34(3), the
words “in its area”.

Section 40(4).

In section 41(1), in paragraph (c), the words “(except section 40(4))” and paragraphs (d)(ii) and (e).

In section 46(1), the words “in its area” where they first occur and “in its area or elsewhere”.

In section 47, in subsection (1), the words “in its area” and in subsection (2), the words “in the authority’s area”.

In section 48(1), the words “in its area”.

In section 50, the words “in its area”.

Sections 53, 54, 55 and 56(4).

In section 57, paragraph (a).

Section 58.

Section 58A.

Section 58B.

Section 59.

Section 59A.

In sections 61(9) and 65(8) the words “section 59 of this Act (in relation to Scotland) or” and the words “(in relation to England and Wales)”.

In section 69, in subsection (1), paragraph (a) and, in paragraph (c) the words “section 59(2) or”, and in subsection (3) the words “section 59(6) or” and paragraph (i).

In section 73, in subsection (1), the definition of "equipment", in the definition of "person responsible" paragraphs (b) and (c), and the definition of "road noise", and in subsection (3) the words from "; but a requirement" to the end of the subsection.

In section 74, the words "Subject to sections 58A(8) and 59A(9) of this Act".

In section 87(3), the words from the beginning to "offence; and" and the words "in its application to Scotland".

Section 91(5)(a).

In section 96(3), the words from "but as if" to the end.

In section 104(1), the word "59".

Section 106(2).

In Schedule 2, paragraphs 1 to 3.

In Schedule 3, paragraphs 12 and 13.

SI 1974/2170	The Clean Air Enactments (Repeals and Modifications) Regulations 1974	In Schedule 2, paragraph 1.
1975 c 24	The House of Commons Disqualification Act 1975	In Schedule 1, in Part II, the entry relating to the National Rivers Authority.
1975 c 25	The Northern Ireland Assembly Disqualification Act 1975	In Schedule 1, in Part II, the entry relating to the National Rivers Authority.

1975 c 30	The Local Government (Scotland) Act 1975	<p>In section 16, the words “and river purification boards”.</p> <p>Section 23(1)(e).</p> <p>In Schedule 3, in paragraph 28(1), the words “or a river purification board”.</p>
1975 c 51	The Salmon and Freshwater Fisheries Act 1975	<p>In section 5(2), the words following paragraph (b).</p> <p>In section 10, in subsections (1) and (2), the words “with the written consent of the Minister” in each place where they occur.</p> <p>In section 15, in subsections (1) and (3), the words “with the written consent of the Minister” in each place where they occur.</p> <p>In section 30, the paragraph defining “fish farm”.</p> <p>In section 41(1), the definition of “grating”.</p>
1975 c 70	The Welsh Development Agency Act 1975	<p>In section 16(9), in the definition of “local authority”, paragraph (b) and the word “or” immediately preceding it.</p>
1976 c 74	The Race Relations Act 1976	<p>In section 19A(2)(a), the words “a special planning board or a National Park Committee”.</p>
1980 c 45	The Water (Scotland) Act 1980	<p>In section 33(3)(a), subparagraph (ii) and the preceding “and”.</p> <p>In section 109(1), the definitions of “river purification authority” and</p>

		“river purification board”.
		In Schedule 1, in paragraph 11(ii) the words “and any river purification authority”.
1980 c 65	The Local Government, Planning and Land Act 1980	In section 52(1), paragraph (b) and the word “and” immediately preceding it.
		In section 103(2)(c), the word “and” immediately preceding sub-paragraph (ii).
		In Schedule 2, paragraph 9(2) and (3).
1980 c 66	The Highways Act 1980	In section 25(2)(a) the words from “or a joint planning board” to “National Park”.
		In section 27(6), the words from “or any such joint planning board” onwards.
		In section 29, the words “and joint planning boards”.
		In section 72(2), the words “or joint planning board”.
		Section 118(7).
1981 c 67	The Acquisition of Land Act 1981	In section 17, in subsection (3), the words “the Peak Park Joint or Lake District Special Planning Board” and, in subsection (4), in the definition of “a Welsh planning board”, paragraph (b) and the word “or” immediately preceding it.
		In paragraph 4 of Schedule 3, in sub-paragraph (3), the words “the Peak Park Joint or

		Lake District Special Planning Board” and, in sub-paragraph (4), in the definition of “a Welsh planning board”, paragraph (b) and the word “or” immediately preceding it.
1981 c 69	The Wildlife and Countryside Act 1981	Section 39(5)(a). In section 44, subsection (1) and in subsection (1A), the words from the beginning to “but”. Section 46. In section 52(2), paragraph (a) and, in paragraph (b), the words “in any other provision”.
1982 c 30	The Local Government (Miscellaneous Provisions) Act 1982	In section 33(9), in paragraph (a), the words from “or reconstituted” to “1972” and, in paragraph (b), the words “or reconstituted”. In section 41(13), in paragraph (b) of the definition of “local authority” the words from “or reconstituted” to “1972”. In section 45(2)(b), the words from “or reconstituted” to “1972”.
1982 c 42	The Derelict Land Act 1982	In section 1(11), in the definition of “local authority”, paragraph (b) and the word “or” immediately preceding it.
1982 c 48	The Criminal Justice Act 1982	In Schedule 15, paragraphs 6 and 7.
1983 c 35	The Litter Act 1983	In section 4(1)— (a) paragraph (b) and the word “and” immediately

		preceding it; and
		(b) the words “the National Park Committee (if any)” in each place where they occur.
		In section 6(8), the words “or a Park board”.
		In section 10, paragraph (h) of the definition of “litter authority” and the definitions of “National Park Committee” and “Park board”.
1984 c 54	The Roads (Scotland) Act 1984	In Schedule 9, paragraph 17(3).
1985 c 51	The Local Government Act 1985	In Schedule 3—
		(a) paragraph 4;
		(b) in paragraph 5, sub-paragraphs (2) to (8);
		(c) paragraph 6; and
		(d) in paragraph 7, sub-paragraph (3) and in sub-paragraph (4), the words “42” and “44”.
1985 c 68	The Housing Act 1985	In section 573, in subsection (1), the entries relating to the Peak Park Joint Planning Board and the Lake District Special Planning Board and, in subsection (1A), paragraph (b) and the word “or” immediately preceding it.
SI 1987/180	The Control of Industrial Air Pollution (Transfer of Powers of Enforcement) Regulations 1987	Regulations 2 and 4.
1988 c 4	The Norfolk and Suffolk Broads Act 1988	In Schedule 6, paragraphs 2 and 13.

1988 c 9	The Local Government Act 1988	In Schedule 2, the entries relating to the Lake District Special Planning Board, the Peak Park Joint Planning Board and a special planning board constituted under paragraph 3A of Schedule 17 to the Local Government Act 1972.
1988 c 41	The Local Government Finance Act 1988	In section 74(7), paragraph (b) and the word “and” immediately preceding it.
1989 c 14	The Control of Pollution (Amendment) Act 1989	Section 2(3)(e). Section 7(2) and (8). Section 11(3).
1989 c 15	The Water Act 1989	In Schedule 1, paragraphs 11, 12 and 13. In Schedule 17, paragraphs 3(2) and (3), 5(2), 7(9)(d) and 9(1). In Schedule 25, paragraphs 43(1) and paragraph 48(3) and (4).
1989 c 29	The Electricity Act 1989	In Schedule 8, paragraph 2(6)(a)(i).
1989 c 42	The Local Government and Housing Act 1989	Section 5(4)(c). Section 13(4)(d). In section 21(1), paragraph (m) and the word “and” immediately preceding it. Section 39(1)(h). Section 67(3)(o). Section 152(2)(k). In Schedule 1, in paragraph 2(1)(b), the word “(m)” and paragraph 2(1)(f).

In section 1, in subsection
(5)—

- (a) in paragraph (a),
the words from
“and Part I” to
“National Parks”;
and
- (b) in paragraph (c),
the words
“section 4 and”;

and, in subsection (6), the
words “section 4(3) and”.

In section 2(7), the words
from “and Part I” to “National
Parks”.

Section 4.

In section 4A(1), the words
“instead of section 4(1) to
(4)”.

Section 105.

In section 244(1), the words
from “or a board” to “1972”.

In Schedule 1—

- (a) in paragraph 4(2),
the words “or
county planning
authority” and the
words “or, as the
case may be,
which is”;
- (b) in paragraph 6,
the words from
“(including” to
“National Park”;
- (c) in paragraph
13(1), paragraph
(d) and the word
“or” immediately
preceding it;
- (d) in paragraph 19,
sub-paragraph
(2); and

		(e) in paragraph 20(4), paragraph (a) and, in paragraph (b), the word "other".
1990 c 9	The Planning (Listed Buildings and Conservation Areas) Act 1990	In section 66(3), the words from "and a board" onwards. In Schedule 4— (a) in paragraph 2, the word "4"; (b) in paragraph 3, the words or county planning authority" and the words "or, as the case may be, which is"; and (c) in paragraph 4(1), the words "4(3) and (4)".
1990 c 10	The Planning (Hazardous Substances) Act 1990	In section 3— (a) in subsection (1), paragraph (a) and the words after paragraph (c); (b) subsection (2); and (c) in subsections (3) to (5A), the words "or (2)", wherever occurring.
1990 c 11	The Planning (Consequential Provisions) Act 1990	In Schedule 2— (a) paragraph 20; (b) paragraph 28(6); and (c) in paragraph 45, sub-paragraph (2) and in sub-

1990 c 43

The Environmental Protection
Act 1990

paragraph (7),
the words
“118(7)”.

In section 4, in subsection (8), the words “or, as the case may be, in the Edinburgh Gazette”, in each place where they occur, and, in subsection (11), the words “and Wales” in paragraph (b) and paragraph (c) and the word “and” immediately preceding it.

Section 5.

In section 7(9), the words from “and, in relation to Scotland,” to the end.

In section 8, subsection (4) and, in subsection (7) the words from “together with” onwards and subsection (9).

Sections 16 to 18.

Section 20(3) and (9).

In section 23, in subsection (1), paragraphs (d) to (f) and (k), and subsections (4) and (5).

In section 28, in subsection (1), the words from “but” onwards and subsections (3) and (4).

In section 30, in subsection (4), the words “or regulation authorities” and the words from “establishing authorities” onwards and subsections (6) to (8).

Section 31.

In section 33(1), the words “and, in relation to Scotland, section 54 below,”.

In section 36, subsections (5) and (6), in subsection (11), in the definition of “National

Park authority”, the words “subject to subsection (12) below” and subsection (12).

In section 37(5), the words “(5), (6),” and “(8)”.

In section 39, in subsection (7), the words following paragraph (b), subsection (8), in subsection (12), in the definition of “National Park authority”, the words “subject to subsection (13) below”, and subsection (13).

Section 41.

In section 42, subsection (2) and, in subsection (7), the words from “and the power” onwards.

Section 43(2)(a) and (b).

Section 50.

Section 54.

Section 61.

In section 64, subsection (1)(l) and, in subsection (4), the words “which is not a waste regulation authority”.

Sections 67 to 70.

In section 71, subsection (1) and, in subsection (3), paragraph (b) and the word “or” immediately preceding it.

Section 72.

Section 75(3).

In the heading immediately preceding section 79, the words “: England and Wales”.

In section 79, in subsection (7), in the definition of “local authority”, the word “and” following paragraph (b).

Section 83.

In section 88, in subsection (9), paragraphs (c) and (d), and, in subsection (10), in the definition of “authorised officer”, the words from “or in the case” to “on behalf of” and the definitions of “National Park Committee” and “Park board”.

In section 141, in subsection (5)(a), sub-paragraph (ii) and the word “and” immediately preceding it.

Section 143.

In Schedule 2, in paragraph 17(2), the words “a waste regulation authority or”.

In Schedule 8—

- (a) paragraph 1(13);
- (b) paragraph 3; and
- (c) in paragraph 4, the words from the beginning to “in Wales) and”.

In Schedule 15, paragraphs 5(4) and 16 and, in paragraph 31, in sub-paragraph (2), the word “(6),” where secondly occurring, the word “(2)”, where thirdly occurring, and sub-paragraphs (4)(c) and (5)(c).

In section 15(3) the words “and a river purification authority of whom such a requirement is made shall make such an application”.

In Schedule 2, paragraph 10(3).

In Schedule 5, in paragraph 2 the words “in their area and”.

		In Schedule 6, paragraph 1(5).
		In Schedule 8, in sub-paragraph (3) of paragraph 1, in the second column of the Table, in the fourth entry, the words “, river purification authority”.
		In Schedule 10, paragraphs 1, 6, 7(2) and 9(3)(b) and (6).
1991 c 34	The Planning and Compensation Act 1991	In Schedule 4, paragraph 39.
1991 c 56	The Water Industry Act 1991	In section 4(6), the definition of “National Park authority” and the word “and” immediately preceding it. Section 132(7). Section 151. Section 171(4) and (5). In section 206(2), the words “196 or”. In section 219(1), the definition of “the NRA”.
1991 c 57	The Water Resources Act 1991	Sections 1 to 14. Sections 16 to 19. In section 34, the word “planning”, wherever it occurs, and subsection (5). In section 45,— (a) in subsection (2), the word “planning”, wherever it occurs; and (b) in subsection (3), the words “and (5)”.

Section 58.

Section 68.

Section 69(5).

In section 91, in subsection (1), the word "or" immediately preceding paragraph (f).

Section 105(1).

In section 113(1), in the definition of "drainage", the word "and" immediately preceding paragraph (c).

Section 114.

Section 117.

Sections 121 to 124.

Section 126(6).

Section 129(4).

Sections 131 and 132.

Section 144.

Section 146.

Sections 150 to 153.

Section 187.

In section 190(1), paragraph (d), paragraph (f) and the word "and" immediately preceding it.

Section 196.

Section 202(5).

Section 206(2).

Section 209(1), (2) and (4).

Sections 213 to 215.

Section 218.

		In section 219, in subsection (2), the words "Subject to subsection (3) below," and subsection (3).
		In section 221(1), the definitions of "the Authority" and "constituent council".
		Schedule 1.
		Schedules 3 and 4.
1991 c 59	The Land Drainage Act 1991	In section 61C(5), the definition of "National Park authority" and the word "and" immediately preceding it.
		In section 72(1), the definition of "the NRA".
1991 c 60	The Water Consolidation (Consequential Provisions) Act 1991	In Schedule 1, paragraphs 17, 18(a), 25, 27(2) and 56(3) and (4).
1992 c 14	The Local Government Finance Act 1992	Section 35(5)(a) and (b).
		In Schedule 13, paragraph 95.
1993 c 11	The Clean Air Act 1993	Section 3(2)(b) and the word "or" which immediately precedes it.
		Section 17.
		Section 42(5).
		Section 51(1)(b) and the word "or" which immediately precedes it.
		In Schedule 3, paragraph 4(b).
1993 c 12	The Radioactive Substances Act 1993	Section 4.
		Section 5.
		In section 16, in subsection (2), the words "Subject to subsection (3)," subsection

(3) and, in subsection (10), the words from “or, as” to “appropriate Minister”.

Section 17(4).

In section 18, in subsection (1), the words “(or, in a case” to “or that Minister)” and “or the appropriate Minister, as the case may be,” and, in subsection (2)(b), the words from “(or, where” to “that Minister”.

Section 20(3).

In section 21, subsection (3) and, in subsection (4), the words from “or, where” to “that Minister”.

In section 22, subsection (5), in subsection (6), the words from “or, where” to “that Minister” and in subsection (7), the words from “or, where” to “that Minister”.

In section 25, in subsection (2), the words from “or, in a case” to “Food,” and “or their”.

In section 26, subsection (3)(a) and, in subsection (4), the words “England, Wales or”.

Section 28.

Section 31.

Section 35.

In section 39, in subsection (2), the words from “or, as” to “and the chief inspector,”.

Section 42(5).

Section 43.

In section 47, in subsection (1), in the definition of “the appropriate Minister”, paragraphs (a) and (b), in the

		<p>definition of “the chief inspector”, paragraphs (a) and (b), in the definition of “prescribed”, the words from “or, in relation to fees” onwards and in the definition of “relevant water body”, in paragraph (a), the words “the National Rivers Authority” and, in paragraph (b), the words “a river purification authority within the meaning of the Rivers (Prevention of Pollution) (Scotland) Act 1951”.</p> <p>In section 48, in the Table, the entry relating to the chief inspector.</p> <p>Schedule 2.</p> <p>In Schedule 3, in Part II, in paragraph 11 the words “16, 17”.</p>
1993 c 25	The Local Government (Overseas Assistance) Act 1993	Section 1(10)(g).
1993 c 40	The Noise and Statutory Nuisance Act 1993	Section 6.
		Section 13(2).
		Schedule 1.
1994 c 19	The Local Government (Wales) Act 1994	Section 19(2) and (3).
		Section 59(15).
		In Schedule 5, in Part III, paragraph 10.
		In Schedule 6, paragraphs 3 to 12, 18, 23, 24(1), 28 and 29.
		In Schedule 9, paragraph 17(4) and (12).
		In Schedule 11, paragraph 3(1) and (2).
		In Schedule 15, paragraph

		64(b).
		In Schedule 16, paragraph 65(5) and (9).
		In Schedule 17, paragraph 13.
1994 c 39	The Local Government etc (Scotland) Act 1994	Section 37.
		Section 54(5).
		In section 165(6), the words "a river purification board".
		In Schedule 13, paragraphs 38(2) to (7), 85(3)(a) and (b)(i) and (4), 92(34) and (35), 93(2), 95(2), (4), (8) and (9), and 119(54)(a)(ii) and (h)(iii) and, in paragraph 167, sub-paragraph (2), in sub-paragraph (3) the words "(1)(g)," and sub-paragraphs (4), (5), (7) and (9).
1995 c 25	The Environment Act 1995	In section 8, in the definition of "National Park authority" in subsection (5), the words "subject to subsection (6) below" and subsection (6).
		In Schedule 10, paragraph 22(1) and (7) and, in paragraph 34(1), so much of paragraph (b) as precedes the word "and".
		In Schedule 11, in paragraph 1, in the definition of "National Park authority" in sub-paragraph (3), the words "subject to sub-paragraph (4) below" and sub-paragraph (4).
		In Schedule 22, paragraphs 19 to 27, 46(11)(a), 182 and 231.

[FTE

NOTES

Appointment

Appointment (in part): 21 September 1995: see SI 1995/1983, art 3.

Appointment (in part): 1 January 1999: see SI 1995/1983, art 4.
Appointment (in part): 1 November 1995: see SI 1995/2765, art 2.
Appointment (in part): 1 February 1996: see SI 1996/186, art 2.
Appointment (in part): 1 April 1996: see SI 1996/186, art 3.
Appointment (in part): 1 April 1997: see SI 1996/2560, art 2, Schedule.
Appointment (in part): 1 January 1997: see SI 1996/2857, art 2.
Appointment (in relation to England in part): 1 April 2000: see SI 2000/340, art 2.
Appointment (in relation to Scotland in part): 14 July 2000: see SSI 2000/180, art 2(1)(c)
Appointment (in relation to Wales in part): 15 September 2001: see SI 2001/3211, art 2(c).
Appointment (in relation to Scotland in part): 1 January 2005: see SSI 2004/541, art 2(b).
Appointment (in relation to England and Wales in part): 15 May 2006: by virtue of SI 2006/934, art 2.

Amendment

Entry relating to "The Public Health (Scotland) Act 1897" (omitted) repealed by the Public Health etc (Scotland) Act 2008, s 126(1), Sch 3, Pt 1.

Date in force: 1 October 2009: see SSI 2009/319, art 2(a), Sch 1.