

**REGULATION GUIDANCE  
AND DIRECTION MAKING POWERS  
IN THE ENVIRONMENT ACT 1995  
IN RELATION TO THE  
ENVIRONMENT AGENCY**

National Rivers Authority  
Information Centre  
Head Office  
Class No .....  
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## **INTRODUCTION**

This document provides a summary of the regulation, guidance and direction making powers of Ministers in the Environment Act 1995 as they relate to the Environment Agency functions (it does not cover issues relating to Scottish Environment Protection Agency, mineral planning permissions etc). The document should be read in conjunction with the document containing a summary of the duties and powers of the Environment Agency.

All references in this document to section numbers are to section numbers in the Environment Act 1995, unless specified otherwise. Relevant dates have been supplied where known.

Any comments and/or additions would be welcome and should be provided to:

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## 1. OBJECTIVES OF ENVIRONMENT AGENCY

### Guidance

- s.4(2)(3) Duty for Ministers to give guidance to the Agency from time to time with respect to the Agency's objectives. Guidance must include guidance with respect to the contribution to be made by the Agency towards sustainable development.

#### Relevant Dates:

- April 95 - Draft guidance on sustainable development.  
Dec 95 - Formal consultation on sustainable development guidance.

## 2. TRANSFER SCHEMES

### Guidance

- s.3(4) Power to provide guidance as to provisions regarded as appropriate for inclusion in transfer scheme.

#### Relevant Dates:

- 29.8.95 DoE circular issued to waste regulation authorities.

## 3. GENERAL DIRECTION MAKING POWERS

### Direction

- s.40 General/specific direction making powers of Ministers  
s.122 General provisions with respect to directions including the power to revoke or to modify direction.

#### Relevant Dates:

- ?: Agency's role on flood warnings

## 4. AMENDMENT OF EXISTING LEGISLATION

### Regulations

- s.40 Power of Ministers to make additional consequential amendments of public general enactments passed before or in the same session of the EA95 and of

subordinate legislation made before the passing of the EA95 by way of regulations.

**Relevant Dates:**

**5. REQUESTS FOR INFORMATION**

**Direction**

- s.51 Any information required by the Minister relating to Agency property, carrying out/proposed carrying out of its functions and its responsibilities generally must be contained within a direction.

**Relevant Dates:**

**6. ANNUAL REPORT**

**Direction**

- s.52 Form of Annual Report may be specified in direction.

**Relevant Dates:**

**7. CONTAMINATED LAND**

**Guidance**

References to Sections are to Environmental Protection Act 1990 (which are inserted by Section 57 EA95)

- s.78A(2) Determination of whether land is contaminated
- s.78A(5)(6) Determination of significant & pollution of controlled waters
- s.78B(2) Performance of Local Authority role in identifying sites
- s.78E(5) Remediation requirements
- s.78F(6)(7) Two or more appropriate persons - which person is not to be treated as such  
Two or more appropriate persons - apportionment of costs
- s.78Q(6) Inspection of Special Sites by Agency; Termination of designation as such Sites
- s.78W(1) General guidance with respect exercise/performance of contaminated land powers and duties
- s.78Y Procedure for Secretary of State to follow in issuing guidance under contaminated land provisions.

**Relevant Dates:**

## Direction

References to Sections are to Environmental Protection Act 1990 (as inserted by Section 57 EA95)

- s.78S(2) Exclusion of certain information from registers or determination of exclusion to be made to Secretary of State
- s.78T(7) Information to be included on registers in the public interest notwithstanding that information may be commercially confidential.

### **Relevant Dates:**

## Regulations

References to sections are to Environmental Protection Act 1990 (which are inserted by Section 57EA95)

- s.78C(8)(9)  
(10) Definition of Special Sites
- s.78E(1)(5) Form Content and Procedure for service of remediation notice
- s.78G(5) Procedure for application for compensation by third party who grants rights to enable remediation to take place
- s.78H(1)(2) Consultation requirements prior to service of remediation notice
- s.78L(4)(5) Grounds and procedure for appeals against remediation notices
- s.78P(10) Grounds and procedure for appeals against charging notices
- s.78R(1)(1)(2) Other information to be held on registers and form of certain information
- s.78R(8) Places for registers to be made available
- s.78X(5) Supplementary provisions - removal of personal liability for receivers, etc.
- s.78YC Power to apply contaminated land provisions or part thereof to harm/pollution attributable to radioactivity; to modify RSA93 or any other Act Secretary of State considers appropriate

### **Relevant Dates:**

Contaminated land provisions timetable - Autumn 96?

## **8. FIRST TIME SEWERAGE**

### Guidance

- Schedule 22 para 103 Power to issue guidance relating to the relevant considerations to be taken into account by sewerage undertakers when complying with their duty to provide sewers under the new Section 101A of the Water Industry Act 1991 inserted by this para of Schedule 22. Duty of Secretary of State to consult Agency before issuing guidance and to publish any guidance so issued.

**Relevant Dates:**

Draft guidance currently with Water Quality (M Griffiths) for informal views

**9. NATIONAL WASTE STRATEGY**

**Direction**

References to sections are to Environmental Protection Act 1990 as inserted by EA95

- s.44A(6) Power of Minister to direct Agency to advise on policies to be included; to carry out surveys or investigations and to report findings
- s.44A(7) Specification of matters/areas to be subject to survey/investigation and manner of work to be carried out.

**Relevant Dates:**

**10. WASTE MANAGEMENT**

**Direction**

Schedule 22 para 82 Power to direct the removal of certain information from any public register.

**Regulations**

- Schedule 22 para 65 Power to amend duty of care provisions to add to list of authorised persons for the purposes of Section 34(1)(c) EPA90
- Schedule 22 para 67 Duty to provide for description of losses for which compensation may be claimed by third party whose consent needed or by whom rights have been granted to permit compliance with licence
- Schedule 22 para 67 Power to provide for basis on which compensation to be paid etc.
- Schedule 22 para 69 Power to specify period for the making of representation to the Agency following consultation before the grant of certain licences
- Schedule 22 para 71 Power to specify period for the making of representations to the Agency following consultation before the variation of certain licences
- Schedule 22 para 73 Power to amend the definition of "appropriate planning authority" in Section 39 EPA90 (surrender of licences).

**Relevant Dates:**

11. **IPC (AMENDMENTS TO ENVIRONMENTAL PROTECTION ACT 1990)**

**Direction**

- Schedule 22 para 93 Power to direct the Agency to transmit certain application or class of applications for variation to Secretary of State for determination
- Schedule 22 para 93 Power to direct the Agency to grant or otherwise an application for a variation of authorisation which has been called in for determination
- Schedule 22 para 93 Power to direct Agency not to proceed with or to determine application or class of applications until expiry of specified date or until directed to do so.

**Relevant Dates:**

12. **EFFICIENT USE OF WATER**

**Direction**

- Schedule 22 para 102 This para inserts a new section to the Water Industry Act 1991 imposing a duty on every water undertaker to promote the efficient use of water by its customers. THE DIRECTOR (not the Secretary of State) has power to require a water undertaker to take certain action in performance of its duty. Duty on Director to consult with the undertaker before imposing any requirement, which requirement may include making facilities and information available to customers.

**Relevant Dates:**

13. **WATER RESOURCES ACT AMENDMENTS 1991 (INCL SCHEDULE 10)  
DISCHARGE CONSENTS & ABSTRACTION/IMPOUNDMENT LICENCES**

**Direction**

- Schedule 22 para 142 Power to direct Agency in relation to any person whether and how to exercise its powers to issue enforcement notices
- Schedule 22 para 162 Power to direct Agency in relation to any person whether or how to exercise its powers to issue works notices
- Schedule 22 para 169 Power to direct Agency to remove certain information from the pollution control register
- Schedule 22 para 170 Power to direct Agency on exclusion of certain information from pollution control register or to direct referral to Secretary of State for his determination
- Schedule 22 para 170 Power to direct Agency to include certain information on registers kept or maintained by the Agency on the grounds of

	public interest notwithstanding that it might be commercially confidential
Schedule 22 para 182	Power to direct the NRA to review consents. Power to direct the NRA to modify or condition consent following submission of proposals from the NRA as a result of the review
Sch 22 para 183	substitutes a new Sch 10 in the Water Resources Act 1991. It introduces some new direction making powers and retains existing powers as set out below
Sch 10 para 4	Power to direct Agency not to determine or proceed with the determination of an application or class of applications until the expiry of a specified period or until the Secretary of State so directs
Sch 10 para 5	Power to direct Agency to transmit determination of certain applications to Secretary of State (eg a result of representations made to him or if of a particular type specified for such transmission)
Sch 10 para 7	Power to direct the Agency to revoke, modify or condition a consent if it appears appropriate to do so for specified purposes (as set out in para 7(4))
Sch 10 para 9	Power to direct the Agency to carry out a review of consents. Power to direct the Agency to modify/condition consent(s) following submission of proposals of the Agency as a result of the review
Sch 23 para 23	Power to direct Agency to grant such licences as are necessary to ensure that water may continue to be abstracted/impounded by or on behalf of the Crown in the manner in which or to the extent to which it may be abstracted etc. immediately before the coming in to force of the removal of crown exemption by the EA95 or it has been abstracted etc. at any time in the period of five years before the coming to force of the relevant section of the EA95.

**Relevant Dates:**

**Regulations**

Schedule 22 para 112	Manner of advertisement of applications for consent under 89(4)(a) 90(1)(2) WRA 1991
Schedule 22 para 143	Power to issue regulations in relation to appeals on consents and enforcement para 143 notices dealing in particular with period and manner in which appeals to be brought and their consideration
Schedule 22 para 162	Power to make regulations to works notices introduced by an amendment to Section 161 WRA91 (including the form and content of notices, requirements for consultation, procedural steps to be taken)
Schedule 22 para 162	Power to make regulations relating to procedure etc for applying for compensation for rights of entry etc granted by third parties to enable works under a notice to be carried out.



Schedule 22 para 162	Power to make regulations in relation to appeals against works notices including grounds of appeal and procedural requirements
Schedule 22 para 169	Power to make regulations prescribing "other matters relating to quality of water or the pollution of water" to be kept on the pollution control register.
Schedule 22 para 170	Power to substitute period of time within which Agency is to determine that information provided for the purpose of an application for a discharge consent or its variation or for the purpose of complying with a condition on a consent or complying with a notice under Section 202 WRA91 (request for information) is commercially confidential or not (Current period specified in legislation is 14 days from date of application) or its variation or for the purpose of complying with a condition on a consent or complying with a notice under Sec 202 WRA91 (request for information) is commercially confidential or not. (Current period specified in legislation is 14 days from date of an application for a discharge consent.)
Schedule 22 para 183	This para of the EA95 substitutes a new Schedule 10. There are various elements which are dependent on the issue of regulations as set out below
Schedule 10 para 1	Advertising requirements
Schedule 10 para 2	Consultation requirements on applications including any exemptions . Power to amend current six week period for representations
Schedule 10 para 3	Power to amend current four month period for determination of application before consent is deemed to have been refused
Schedule 10 para 6	Notice of consent granted without application to be published in accordance with any regulations and copies sent to persons as may be prescribed in regulations. Representations to be made in accordance with any regulations.

**Relevant Dates:**

Unofficial first draft of resulting changes with Water Quality (M Griffiths) for comment.

## 14. REVOCATION OF ENVIRONMENTAL LICENCES

### Regulations

- s.41(5)(10) Appropriate procedure for revocation or suspension of environmental licences.

Relevant Dates:

## 15. ABANDONED MINES

### Regulations

References to sections are to WRA91 which are inserted by Section 58 EA95

- s.91B(2) Information to be contained in notice of abandonment  
s.91B(5) Information to be contained in notice of abandonment by Receiver/Trustee in Bankruptcy  
s.91B(6) Particulars of notice of abandonment to be published.

Relevant Dates:

## 16. NATIONAL AIR QUALITY STRATEGY

### Regulations

- s.87 and Sch 11 & para 5 Provisions for implementation of Strategy, obligations of UK in respect of Schedule 11 assessment or management of the quality of air Duty on Minister to consult Agency before making any regulations under Part IV EA95 which deals with air quality.

Relevant Dates:

## 17. PRODUCER RESPONSIBILITY

### Regulations

- s.93(1) Producer responsibility obligations in respect of prescribed products or materials in order to promote or secure an increase in the reuse, recovery or recycling of those products or materials  
s.93(3)(6) Consultation requirements; Minister must be satisfied as to certain specified matters before making regulations

- s.94 Supplementary provisions with regard to content of regulations including scope of Agency role, fees to be charged, register requirements, duty to monitor compliance, etc.
- s.95 Offences to be identified in regulations.

**Relevant Dates:**

**18. FISHERIES FIXED PENALTIES**

**Regulations**

- s.104(9)-(15) Offences to be identified as appropriate for fixed penalty scheme, calculation of penalty and provisions for the giving of fixed penalties.

**Relevant Dates:**

**19. POWERS OF ENTRY**

**Regulations**

- s.108(4)(m) Any other power which is conferred by way of regulations (over and above existing provisions)
- s.108(9) Power to provide for procedure on the taking and dealing with samples under Section 108(4)(f).