

Environmental Protection Act 1990

Introduction

This is a voluminous and detailed **framework** Act. The **1990 Act** consists of 164 sections and 16 schedules. The following text concentrates on relevant sections and requirements.

Amendments

EPA 1990 has been amended by the **Environment Act 1995**, the **Clean Neighbourhoods and Environment Act 2005**, the **Waste Management (England and Wales) Regulations 2006**, the **Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005** and the **Noise and Statutory Nuisance Act 1993**. More recently the **Environmental Permitting Regulations** have also amended this Act. Where appropriate, amendments have been incorporated into the text below.

Interpretation - EPA 1990

Environment consists of 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.

Pollution of the Environment is due to the release (into any environmental medium) from any process of substances, which are capable of causing harm to man or any other living organisms supported by the environment.

Harm means harm to the health of living organisms or other interference with the ecological systems of which they form part and, in the case of man, includes offence caused to any of his senses or harm to his property.

Process means any activities carried on in Great Britain, whether on premises or by means of mobile plant, which are capable of causing pollution of the environment.

Activities means industrial or commercial activities or activities of any other nature whatsoever.

Great Britain includes so much of the adjacent territorial sea as is, or is treated as, relevant territorial waters.

Mobile plant means plant which is designed to move or to be moved, whether on roads or otherwise.

Enforcing Authority, in relation to England and Wales, is the Environment Agency or the local authority. In relation to Scotland, references to the 'enforcing authority' and a 'local enforcing authority' are references to the Scottish Environment Protection Agency (SEPA).

Authorisation means an authorisation for a process whether on premises or by means of mobile plant.

A substance is 'released' into any environmental medium, whenever it is released directly into that medium, whether it is released into it within or outside Great Britain, and release includes:

- ◆ In relation to air, any emission of the substance into the air.
- ◆ In relation to water, any entry (including any discharge) of the substance into water.
- ◆ In relation to land, any deposit, keeping or disposal of the substance in or on land.

Part I - Integrated Pollution Control and Air Pollution Control by Local Authorities

Part I of the **EPA** has been repealed by the **Pollution Prevention and Control Act 1999** and the **Environmental Permitting Regulations 2010**.

Part II - Waste on Land

This part of the Act, as amended, applies to the disposal of all controlled waste. It now includes agricultural, mines' and quarries' waste and covers hazardous waste.

Section 33: Prohibition on Unauthorised or Harmful Depositing, Treatment or Disposal of Waste

1. A person shall not:

- ◆ Deposit controlled waste, or knowingly cause or permit controlled waste to be deposited in or on any land, unless an environmental permit, authorising the deposit, is in force and the deposit is in accordance with the permit.
- ◆ Submit controlled waste, or knowingly cause or knowingly permit controlled waste to be submitted, to any listed operation (other than an operation listed within subsection 1(a) that:
 - ▶ Is carried out in or on any land, or by means of any mobile plant, and
 - ▶ Is not carried out under and in accordance with an environmental permit
- ◆ Treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.

The above does not apply to:

- ◆ An exempt waste operation
- ◆ The disposal of liquid waste under a consent under Chapter 2 of Part 3 of the Water Resources Act 1991
- ◆ A waste operation which is, or forms part of, an operation which;
 - ▶ Is the subject of a licence under Part 2 of the Food and Environment Protection Act 1985 or
 - ▶ By virtue of an order under section 7 of that Act, does not require a licence.
- ◆ The disposal of agricultural waste in or on land under a permit under Regulation 12 of the **Environmental Permitting (England and Wales) Regulations 2010**.
- ◆ Household waste from a domestic property which is treated, kept or disposed of within the curtilage of the dwelling by or with the permission of the occupier.

Cases prescribed in regulations made by the Secretary of State and the regulations may make different exceptions for different areas.

The Secretary of State, in exercising the above power, shall have regard in particular to the expediency of excluding from the prohibitions in subsection (1) any deposits which are small enough or of such a temporary nature that they may be so excluded; any means of treatment or disposal which are innocuous enough to be so excluded; and cases for which adequate controls are provided by another enactment than this section.

Where controlled waste is carried in and deposited from a motor vehicle, the person who controls or is in a position to control the use of the vehicle shall be treated as knowingly causing the waste to be deposited whether or not he gave any instructions for this to be done.

A person who contravenes the above commits an offence.

It shall be a defence for a person charged with an offence under this section to prove:

- ◆ That he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- ◆ That the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where:
 - ▶ He took all such steps as were reasonably practicable in the circumstances for minimising pollution of the environment and harm to human health; and

- ▶ Particulars of the acts were furnished to the Waste Regulation authority as soon as reasonably practicable after they were done.

Note: the **Clean Neighbourhoods and Environment Act 2005 (CN&E Act 2005)** removed the defence of acting under the instructions of an employer.

A person who commits an offence under this section is liable:

- ◆ On summary conviction, to imprisonment for a term not exceeding 12 months or a fine not exceeding £50,000, or both. Increased by the **CN&E Act 2005**.
- ◆ On conviction on indictment, to imprisonment for a term not exceeding five years or a fine, or both.

Section 33A: Investigation and Enforcement Costs

Inserted by the **CN&E Act 2005**.

The courts can order convicted offenders to pay costs to the regulatory authority in respect of investigations and seizure of vehicles.

Section 33B: Clean-Up Costs

Inserted by the **CN&E Act 2005**.

This section addresses the payment of clean up costs back to the relevant person, for example, the Environment Agency or the occupier of the land.

Section 33C: Forfeiture of Vehicles

The courts can make an order to invest the rights of the vehicle to the relevant enforcing authority.

Section 34 - Duty of Care, etc. as Respects Waste

Implemented through the **Environmental Protection (Duty of Care) Regulations 1991** and **Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005**.

It shall be the duty of any person who imports, produces, carries, keeps, treats or disposes of controlled waste or, as a broker, has control of such waste, to take all such measures applicable to him in that capacity as are reasonable in the circumstances:

- ◆ To prevent any contravention by any other person of regulation 12 of the 2007 Regulations or of a condition of an environmental permit.
- ◆ To prevent the escape of the waste from his control or that of any other person.
- ◆ On the transfer of the waste, to secure that the transfer is only to an authorised person or to a person for authorised transport purposes, and that there is transferred such a written description of the waste, as will enable other persons to avoid a contravention of that section and to comply with the duty under this subsection, as respects the escape of waste.

The above duty does not apply to an occupier of domestic property as respects the household waste produced on the property. However, the **Waste (Household Waste Duty of Care) (England and Wales) Regulations 2005** have inserted section 2A into the **EPA** which states:

"It shall be the duty of the occupier of any domestic property in England to take all such measures available to him as are reasonable in the circumstances to secure that any transfer by him of household waste produced on the property is only to an authorised person or to a person for authorised transport purposes."

The following are authorised persons:

- ◆ Any authority which is a waste collection authority for the purposes of this Part.
- ◆ Any person who is the holder of an environmental permit.
- ◆ Any person to whom section 33 above does not apply by virtue of regulations made by the Secretary of State.

- ◆ Any person registered as a carrier of controlled waste.
- ◆ Any person who is not required to be so registered by virtue of regulations under that Act.
- ◆ A waste disposal authority in Scotland.

The following are authorised transport purposes:

- ◆ Transport of controlled waste within the same premises between different places in those premises.
- ◆ Transport to a place in Great Britain of controlled waste which has been brought from a country or territory outside Great Britain, not having been landed in Great Britain until it arrives at that place.
- ◆ Transport by air or sea of controlled waste from a place in Great Britain to a place outside Great Britain.

A transfer of waste in stages shall be treated as taking place when the first stage of the transfer takes place, and a series of transfers between the same parties of waste of the same description shall be treated as a single transfer taking place, when the first of the transfers in the series takes place.

The Secretary of State may, by regulations, make provision imposing requirements on any person who is subject to the duty imposed above, as respects the making and retention of documents and the furnishing of documents or copies of documents.

Section 34A: Fixed Penalty Notices

Inserted by the CN&E Act 2005.

Fixed penalty notices of £300 may be served where a person has failed to comply with a duty to furnish documents. Once the fixed penalty has been accepted, proceedings cannot be instigated for prosecution.

Section 34B: Power to Search and Seize Vehicles, etc.

An authorised office, or constable, in certain circumstances can stop, search and seize vehicles or enter any premises for the purpose of searching a vehicle. Only uniformed constables can stop a vehicle on the road. It is an offence to not give assistance, required information, or to give false or misleading information. A level 5 fine on the standard scale applies.

Section 34 C: Seizure of Vehicles: Supplementary

Addresses procedures, administration, etc. in relation to seized vehicles.

Waste Management Licences

Sections 35 to 43

Sections 35 to 43 have now been repealed by the **Environmental Permitting Regulations**.

Sections 44A to B

Require the Secretary of State and SEPA to prepare a National Waste Strategy (The National Waste Strategy 2000).

Sections 45 to 61

Deal with the collection, disposal and treatment of controlled waste, particularly in relation to waste collection and disposal authorities. These sections address the duties and functions of waste collection and disposal authorities, receptacles for waste collection, waste recycling and disposal plans, national waste strategy, powers for recycling and the payment of recycling credits. Of particular importance is section 59.

Section 59: Powers to Require Removal of Waste Unlawfully Deposited

If any controlled waste is deposited in or on any land, in the area of a waste regulation authority or waste collection authority, in contravention of section 33(1) above, or regulation 12 of the 2007 Regulations, the authority may, by notice served on him, require the occupier to do either or both of the following:

- ◆ To remove the waste from the land within a specified period not less than a period of 21 days, beginning with the service of the notice.
- ◆ To take within such a period, specified steps with a view to eliminating or reducing the consequences of the deposit of the waste.

Section 62: Special Provision with Respect to Certain Dangerous or Intractable Waste

If the Secretary of State considers that controlled waste of any kind is, or may be so dangerous or difficult to treat, keep or dispose of, that special provision is required for dealing with it, he shall make provision by regulations for the treatment, keeping or disposal of waste of that kind (hazardous).

Section 75: Meaning of Waste, etc.

Waste includes any substance which constitutes a scrap material or an effluent or other unwanted surplus substance arising from the application of any process; and any substance or article which requires to be disposed of as being broken, worn out, contaminated or otherwise spoiled, but does not include a substance which is an explosive within the meaning of the **Explosives Act 1875**. Waste also means certain substances or objects which the holder discards, or intends or is required to discard; and for the purposes of this definition, **holder** means the producer of the waste or the person who is in possession of it.

Producer means any person whose activities produce waste or any person who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste. Anything which is discarded or otherwise dealt with as if it were waste shall be presumed to be waste unless the contrary is proved.

Controlled Waste means household, industrial and commercial waste, or any such waste.

Household Waste means waste from domestic property, that is to say a building or self-contained part of a building, which is used wholly for the purposes of living accommodation; a caravan, which usually and for the time being, is situated on a caravan site, a residential home, premises forming part of a university or school or other educational establishment and premises forming part of a hospital or nursing home.

Industrial Waste means waste from any of the following premises:

- ◆ Any factory, any premises used for the purposes of, or in connection with, the provision to the public of transport services by land, water or air.
- ◆ Any premises used for the purposes of or in connection with, the supply to the public of gas, water or electricity or the provision of sewerage services.
- ◆ Any premises used for the purposes of, or in connection with, the provision to the public of postal or telecommunications services.

Commercial Waste means waste from premises used wholly or mainly for the purposes of a trade or business, or the purposes of sport, recreation or entertainment excluding household waste, industrial waste, waste from any mine or quarry and waste from premises used for agriculture within the meaning of the **Agriculture Act 1947** or, in Scotland, the **Agriculture (Scotland) Act 1948**; and waste of any other description prescribed by regulations made by the Secretary of State.

Part IIA - Contaminated Land

Inserted by the **Environment Act 1995**.

Sections 78A to 78YC of the Act, together with the **Contaminated Land (England) Regulations 2006**, contain the framework for identifying and dealing with contaminated land.

Sections 78A to 78D - Identification of Contaminated Land and Special Sites

Local authorities have a duty to inspect their land to identify whether any is contaminated and whether any should be designated as a 'special site' because of the nature of the contamination. Local authorities are required to draw up a contaminated land strategy and must follow guidance from the Secretary of State.

Contaminated Land is defined as:

Land which appears to be in such a condition, by reason of substances, in, on or under the land, that:

- ◆ Significant harm is being caused or there is a significant possibility of such harm being caused.
- ◆ Pollution of controlled waters is being, or is likely to be, caused.

Following identification, the local authority should then notify the appropriate agency, the owner of the land, the occupiers of any part of the land and any other appropriate person. The site may be designated as 'special'.

Sections 78E to 78G - Remediation

Following designation of a site as contaminated, the enforcing authority should serve a remediation notice on the appropriate person. The appropriate person is normally the person(s) who knowingly caused or permitted the contamination. If they cannot be found, it is usually the current occupier or owner. It is an offence not to comply with the requirements of a remediation notice. A fine not exceeding level 5, plus 1/10th of the level 5 scale for each day the offence continues, following conviction, may be imposed. Where the offence occurs on industrial, trade or business premises, a fine not exceeding £20,000 may be imposed, plus 1/10th of £20,000 for each day.

Section 78H: Remediation Notices

Requires that a remediation notice is not served in the following circumstances:

- ◆ Where it appears to the enforcing authority that there is nothing by way of remediation that could be specified. (Must publish a Remediation Declaration.)
- ◆ If the appropriate person is already undertaking remediation.
- ◆ If the appropriate person is the enforcing authority itself.
- ◆ If the enforcing authority is to carry out the remediation itself.

Appeals are available under section 78L. The **Contaminated Land Regulations 2006** detail the grounds for appeal.

Sections 78N and 78P: Power of Enforcing Authority to Carry out Remediation

The enforcing authority may carry out the remediation work itself, in certain circumstances. For example, in the case of serious harm or where a remediation notice is not complied with.

Section 78Q: Special Sites

The **Contaminated Land Regulations 2006** specify those sites which may be 'special'. The **CN&E Act 2005** has been amended so that radioactive contamination is now included. In the case of Special Sites, the Environment Agency adopts the remediation notice once it has been served.

Sections 78R to 78T: Public Registers

Each enforcing authority is required to maintain a register containing particulars relating to contaminated land and special sites.

Part III - Statutory Nuisances and Clean Air

Section 79: Statutory Nuisances and Inspections

Section 79(1), as amended, defines the following statutory nuisances:

- ◆ Any premises in such a state as to be prejudicial to health or a nuisance.
- ◆ Smoke emitted from premises so as to be prejudicial to health or a nuisance.
- ◆ Fumes or gases emitted from premises so as to be prejudicial to health or a nuisance (private dwellings only).
- ◆ Any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance.
- ◆ Any accumulation or deposit which is prejudicial to health or a nuisance.
- ◆ Any animal kept in such a manner or place as to be prejudicial to health or a nuisance.
- ◆ Any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance (from April 2006, inserted by **CN&E Act 2005**).
- ◆ Artificial light emitted from premises so as to be prejudicial to health or a nuisance (from April 2006, inserted by **CN&E Act 2005**).
- ◆ Noise emitted from premises so as to be prejudicial to health or a nuisance.
- ◆ Noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street (inserted by the **Noise and Statutory Nuisance Act 1993**).
- ◆ Any other matter declared by any enactment to be a statutory nuisance (e.g. the **Public Health Act 1936**, regarding ponds and water courses).

Local authorities have a duty to inspect their areas from time to time to detect whether a nuisance exists, or is likely to occur or recur.

Section 80: Summary Proceedings

Where the local authority is satisfied that a statutory nuisance exists, it must serve an abatement notice on the person responsible. Or if they cannot be found, the owner or occupier. (**CN&E Act 2005** allows the abatement notice to be deferred for seven days while efforts are made to persuade the person responsible to stop the nuisance.) Procedures for noise from vehicles, machinery and equipment in the street, allow a notice to be affixed.

Failure to comply with the terms of the abatement notice may result in prosecution in a Magistrates' Court with a fine of up to £5,000 and £500 for each day, on which the offence continues after conviction. The maximum fine is increased to £20,000 in relation to noise from industrial, trade or business premises.

Section 81: Supplementary Provisions

An authority must take such steps, as are reasonably practicable, to investigate any complaint of statutory nuisance from a person living in its area.

If an abatement notice is not complied with, the local authority may take the necessary steps to abate the nuisance.

Section 82: Summary Proceedings by Persons Aggrieved by Statutory Nuisances

Action to abate a nuisance may also be taken by an individual through the magistrates' court.

Part IV - Litter, etc.

Creates an offence of leaving litter and allows for fixed penalty notices to be served. Also allows the designation of litter control areas. Abandoned Trolleys are also addressed under this part.

Part V - Radioactive Substances

Now repealed and replaced mainly by the **Environmental Permitting Regulations**.

Part VI - Genetically Modified Organisms

Part VII - Nature Conservation

Mainly addresses the duties and functions of the Nature Conservancy Council (now Natural England).

Part VIII - Miscellaneous

Addresses pollution at sea, control of dogs, and straw and stubble burning.