



# Food and Environment Protection Act 1985

## 1985 CHAPTER 48

### PART IV

#### GENERAL AND SUPPLEMENTARY

#### **20 Application to Crown etc.**

- (1) An emergency order operates in relation to land in the designated area in which there is a Crown interest or a Duchy interest.
- (2) Subject to subsection (3) below, a person to whom this subsection applies may perform any functions under this Act in relation to land in which there is such an interest.
- (3) Such a person shall not perform any functions—
  - (a) in relation to land in which there is no interest other than a Crown interest or a Duchy interest; or
  - (b) in relation to land which is exclusively in Crown occupation.
- (4) Subsection (2) above applies—
  - (a) to an investigating officer;
  - (b) to an enforcement officer; and
  - (c) to a person authorised to enforce Part II or III of this Act.

(5) In this section—

“Crown interest” means any interest belonging to Her Majesty in right of the Crown or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;

“Crown occupation” means occupation by Her Majesty in right of the Crown or occupation by a government department; and

“Duchy interest” means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall.

*Status: Point in time view as at 01/02/1991.*

*Changes to legislation: There are currently no known outstanding effects for the Food and Environment Protection Act 1985, Part IV. (See end of Document for details)*

## 21 Offences—penalties etc.

- (1) A person guilty of an offence to which this subsection applies shall be liable—
  - (a) on summary conviction, to a fine of an amount not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to a fine or to imprisonment for a term of not more than two years or to both.
- (2) The offences to which subsection (1) above applies are offences under sections 1(6), [F1 and 2(4)] above.
- [F2(2A) A person guilty of an offence under section 9(1) shall be liable—
  - (a) on summary conviction, to a fine of an amount not exceeding £50,000; and
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.]
- (3) A person guilty of an offence to which this subsection applies shall be liable—
  - (a) on summary conviction, to a fine of an amount not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to a fine.
- (4) The offences to which subsection (3) above applies are offences under sections 9(2) and 16(12) above.
- (5) A person guilty of an offence under Schedule 2 to this Act shall be liable on summary conviction to a fine of an amount not exceeding level 5 on the standard scale.
- (6) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.
- (7) Where the affairs of a body corporate are managed by its members, subsection (6) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (8) Proceedings for any offence under this Act may be taken, and the offence may for all incidental purposes be treated as having been committed, in any place in the United Kingdom.

### Textual Amendments

- F1** Words substituted by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), [s. 146\(6\)\(a\)](#)  
**F2** S. 21(2A) inserted by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), [s. 146\(6\)\(b\)](#)

### Modifications etc. (not altering text)

- C1** S. 21 extended (with modifications) (22.8.1997) by [S.I. 1997/1770](#), [art. 4](#)

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## 22 General defence of due diligence.

- (1) In any proceedings for an offence under this Act it is a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (2) Without prejudice to the generality of subsection (1) above, a person is to be taken to have established the defence provided by that subsection if he proves—
  - (a) that he acted under instructions given to him by his employer; or
  - (b) that he acted in reliance on information supplied by another person without any reason to suppose that the information was false or misleading,and in either case that he took all such steps as were reasonably open to him to ensure that no offence would be committed.
- (3) If in any case the defence provided by subsection (1) above involves an allegation that the commission of the offence was due to an act or omission by another person, other than the giving of instructions to the person charged with the offence by his employer, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless within a period ending seven clear days before the hearing, he has served on the prosecutor a notice giving such information identifying or assisting in the identification of that other person as was then in his possession.

### Modifications etc. (not altering text)

- C2 S. 22 applied (with modifications) (1.2.2000) by S.I. 1999/3483, reg. 4(6)  
S. 22 applied (1.2.2000) by S.S.I. 2000/22, art. 4(5)

## 23 Financial provisions.

- (1) There shall be paid out of money provided by Parliament all sums required for the purpose of making payments on behalf of Her Majesty's Government in the United Kingdom to the international organisations.
- (2) Any expenses of a Minister of the Crown or government department incurred in consequence of the provisions of this Act shall also be paid out of money provided by Parliament.
- (3) Any receipts of a Minister of the Crown or government department under this Act shall be paid into the Consolidated Fund.

## 24 Interpretation.

- (1) In this Act, unless the context otherwise requires—
  - “agricultural” is to be construed in accordance with section 109(3) of the Agriculture Act 1947, section 86(3) of the <sup>M1</sup>Agriculture (Scotland) Act <sup>M2</sup>1948 or section 43(1) of the <sup>M3</sup>Agriculture Act (Northern Ireland) 1949;
  - “British aircraft” means an aircraft registered in the United Kingdom;
  - “British fishery limits” has the meaning assigned to it by the <sup>M4</sup>Fishery Limits Act 1976;
  - “British hovercraft” means a hovercraft registered in the United Kingdom;

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“British marine structure” means a marine structure owned by or leased to an individual residing in or a body corporate incorporated under the law of any part of the United Kingdom;

“British sea-fishery officer” means any person who by virtue of section 7 of the <sup>M5</sup>Sea Fisheries Act 1968 is a British sea-fishery officer for the purposes of the Sea Fisheries Acts;

“British vessel” means a vessel registered in the United Kingdom, or a vessel exempted from such registration under the <sup>M6</sup>Merchant Shipping Act 1894;

“captain”, in relation to a hovercraft, means the person who is designated by the operator to be in charge of it during any journey, or, failing such designation, the person who is for the time being lawfully in charge of it;

“commander”, in relation to an aircraft, means the member of the flight crew designated as commander of that aircraft by the operator, or, failing such designation, the person who is for the time being the pilot in command of the aircraft;

“Convention State” means a state which is a party to the London Convention or the Oslo Convention;

“creature” means any living organism other than a human being or a plant;

“crops” includes any form of vegetable produce;

“designated area” and “designating authority” have the meanings assigned to them by section 1(2) above;

[<sup>F3</sup> “designated circumstances” ] has the meaning assigned to it by section 1(5) above;

“emergency order” and “emergency prohibitions” have the meanings assigned to them by section 1(2) above;

“enforcement officer” has the meaning assigned to it by section 3 above;

.....<sup>F4</sup>

“fish” includes—

- (a) shellfish; and
- (b) part of a fish;

and “fishing” includes fishing for shellfish;

“fishing boat” means any vessel for the time being employed in fishing operations or any operations ancillary thereto;

[<sup>F5</sup>“food” has the same meaning as in the Food Safety Act 1990.]

“human consumption” includes use in the preparation of food for human consumption;

“importation” has the same meaning as in the Customs and Excise Acts 1979;

“incineration” has the meaning assigned to it by section 6 above;

“international organisation” means any organisation established in pursuance of Article XIV of the London Convention or Article 16 of the Oslo Convention;

“investigating officer” has the meaning assigned to it by section 3 above;

“licence” means a licence under Part II of this Act;

“licensing authority” means whichever of the Ministers is responsible for fisheries in the place where an operation to which a licence would relate would be carried out or commenced;

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“the London Convention” means the Convention on the Prevention of Maritime Pollution by Dumping of Wastes and Other Matter concluded at London in December 1972;

“marine structure” means a platform or other man-made structure at sea, other than a pipe-line;

“master”, in relation to any vessel, includes the person for the time being in charge of the vessel;

“the Ministers” means the Minister of Agriculture, Fisheries and Food and the Secretary of State;

“the Oslo Convention” means the Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft concluded at Oslo in February 1972;

“pest”, “pesticide” and “pesticide residue” are to be construed in accordance with section 16 above;

“plants” means any form of vegetable matter, while it is growing and after it has been harvested, gathered, felled or picked, and in particular, but without prejudice to the generality of this definition, includes—

- (a) agricultural crops;
- (b) trees and bushes grown for purposes other than those of agriculture;
- (c) wild plants; and
- (d) fungi;

“sea” includes any area submerged at mean high water springs and also includes, so far as the tide flows at mean high water springs, an estuary or arm of the sea and the waters of any channel, creek, bay or river;

“shellfish” includes crustaceans and molluscs of any kind;

“the standard scale” means the standard scale as defined in section 75 of the <sup>M7</sup>Criminal Justice Act 1982;

“the statutory maximum” means the statutory maximum as defined in section 74 of that Act;

“United Kingdom waters” means any part of the sea within the seaward limits of United Kingdom territorial waters [<sup>F6</sup>and “United Kingdom controlled waters” means any part of the sea within the limits of an area designated under section 1(7) of the Continental Shelf Act <sup>M8</sup>1964]; and

“vessel” has the meaning assigned to it by section 742 of the <sup>M9</sup>Merchant Shipping Act 1894.

- (2) Any reference in this Act to the London Convention or the Oslo Convention is a reference to it as it has effect from time to time.
- (3) Any power conferred by this Act to make orders or regulations may be exercised—
  - (a) either in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and
  - (b) so as to make, as respects the cases in relation to which it is exercised—
    - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
    - (ii) the same provision for all cases in relation to which the power is exercised, or different provision for different cases or different classes of case, or different provision as respects the same case or class of case for different purposes of this Act;

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(iii) any such provision either unconditionally, or subject to any specified condition,

and includes power to make such incidental or supplemental provision in the orders or regulations as the Minister making them considers appropriate.

#### Textual Amendments

- F3** Words substituted by Food Safety Act 1990 (c. 16, SIF 53:1, 2), s. 59(1), **Sch. 3 para. 29(a)**
- F4** Definition repealed by Food Safety Act 1990 (c. 16, SIF 53:1, 2), s. 59(1)(4), Sch. 3 para. 29(b), **Sch. 5**; and expressed to be repealed (N.I.) (21.5.1991) by S.I. 1991/762 (N.I. 7), art. 51(4), **Sch. 4**; S.R. 1991/175, **art. 2(1)**
- F5** Definition substituted by Food Safety Act 1990 (c. 16, SIF 53:1, 2), ss. 54, 59(1), **Sch. 3 para. 29(c)**
- F6** Words inserted by Environmental Protection Act 1990 (c. 43, SIF 46:4), **s. 146(7)**

#### Marginal Citations

- M1** 1948 c. 45.
- M2** 1949 c. 2. (N.I.).
- M3** 1949 c. 2. (N.I.).
- M4** 1976 c. 86.
- M5** 1968 c. 77.
- M6** 1894 c. 60.
- M7** 1982 c. 48.
- M8** 1964 c. 29(**86**).
- M9** 1894 c. 60.

## 25 Northern Ireland.

- (1) It is hereby declared that this Act extends to Northern Ireland.
- (2) In the application of Parts I and III of this Act as respects transferred matters in Northern Ireland—
- (a) subject to paragraph (b) below, for any reference to the Ministers or either of them there is substituted a reference to the Department of Agriculture for Northern Ireland;
  - (b) for any reference to the Ministers or either of them in section 16(2)(g) and (l) [<sup>F7</sup>, 16(13A)], 17, . . . <sup>F8</sup> and 19(1) above there is substituted a reference to any Northern Ireland Department;
  - (c) for any reference to Parliament, each or either House of Parliament or both Houses of Parliament, there is substituted a reference to the Northern Ireland Assembly;
  - (d) for any reference to the Treasury there is substituted a reference to the Department of Finance and Personnel for Northern Ireland;
  - (e) in section 16(10), for the reference to the Health and Safety Commission there is substituted a reference to the Health and Safety Agency for Northern Ireland; and
  - (f) section 17(4)(a) is omitted.
- (3) In the application of Part II of this Act to Northern Ireland—
- (a) in relation to Northern Ireland or United Kingdom waters adjacent to Northern Ireland—

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- (i) for any reference to the Ministers or either or one or other of them, other than the reference in section 12(1) above, there is substituted a reference to the Department of Environment for Northern Ireland ;
  - (ii) for section 7(4) there is substituted the following subsection—
    - “(4) A rule made by the Department of the Environment for Northern Ireland under this section shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.” ; and
  - [<sup>F9</sup>(iii) in section 14(8), for the words from “and any such power” onwards there shall be substituted the words “and any such regulations shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954; and”]
  - (b) for any reference to the consent of the Treasury there is substituted a reference to the consent of the Department of the Finance and Personnel if the licensing authority referred to in the provision in question is the Department of the Environment for Northern Ireland.
- (4) In section 20 above and Schedule 5 to this Act—
- (a) any reference to the Crown includes a reference to the Crown in right of Her Majesty’s Government in Northern Ireland; and
  - (b) “government department” includes a Northern Ireland department.
- [<sup>F10</sup>(4A) Section 24(1) above shall have effect in relation to Northern Ireland as if for the definition of “food” there were substituted the following definition—  
““food” has the meaning assigned to it by Article 2(2) of the Food (Northern Ireland) Order <sup>M10</sup> 1989, except that it includes water which is bottled or is an ingredient of food;”.]
- (5) An order or regulations made under this Act by a Northern Ireland department shall be a statutory rule for the purposes of the <sup>M11</sup>Statutory Rules (Northern Ireland) Order 1979 and references to a statutory instrument shall be construed accordingly.
- (6) In this section “transferred matters” has the meaning assigned to it by section 43(2) of the <sup>M12</sup>Northern Ireland Constitution Act 1973.

#### Textual Amendments

- F7** “, 16(13A)” inserted by [Pesticides \(Fees and Enforcement\) Act 1989 \(c. 27, SIF 46:4\)](#), **s. 1(3)(a)**
- F8** “18(3)” repealed by [Pesticides \(Fees and Enforcement\) Act 1989 \(c. 27, SIF 46:4\)](#), **s. 1(3)(b)**
- F9** [S. 25\(3\)\(a\)\(iii\)](#) inserted (*prosp.*) by [Environmental Protection Act 1990 \(c. 43, SIF 46:4\)](#), ss. 162(1), 164(3), **Sch. 15 para. 25**
- F10** [S. 25\(4A\)](#) inserted by [Food Safety Act 1990 \(c. 16, SIF 53:1, 2\)](#), ss. 54, 59(1), **Sch. 3 para. 30**

#### Marginal Citations

- M10** [S.I. 1989/846 \(N.I. 6\)](#).
- M11** [S.I. 1979/1513 \(N.I. 12\)](#).
- M12** [1973 c. 36](#).

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## 26 Channel Islands etc.

- (1) Her Majesty may by Order in Council make provision for extending Part II of this Act to any of the Channel Islands, the Isle of Man or any colony, with such exceptions, adaptations, modifications as may be specified in the Order.
- (2) An Order in Council under subsection (1) above which makes provision for extending Part II of this Act to any place outside the United Kingdom may also make provision for extending Part IV of this Act to that place with such exceptions, adaptations or modifications as may be specified in the Order, in so far as it appears to Her Majesty that the extension of that Part to that place is appropriate.

## 27 Commencement.

- (1) Subject to subsection (2) below, the provisions of this Act shall come into force on such day as the Ministers may by order made by statutory instrument jointly appoint; and different days may be appointed in pursuance of this section for different provisions or different purposes of the same provision.
- (2) The following provisions of this Act—
  - (a) Part I, including—
    - (i) Schedule 1; and
    - (ii) Schedule 2, so far as that Schedule relates to Part I; and
  - (b) Part IV, so far as it so relates;
  - (c) this section; and
  - (d) section 28 below,shall come into force on the day this Act is passed.
- (3) An order under this section may make such transitional provision as appears to the Ministers to be necessary or expedient in connection with the provisions thereby brought into operation.

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### Modifications etc. (not altering text)

C3 Power of appointment conferred by s. 27(1) fully exercised: [S.I. 1985/1390](#), 1698

## 28 Short title.

This Act may be cited as the Food and Environment Protection Act 1985.



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