

Status: Point in time view as at 01/04/1996.

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SCHEDULES

SCHEDULE 22

MINOR AND CONSEQUENTIAL AMENDMENTS

The Control of Pollution Act 1974

- 19 (1) Section 5 of the ^{M1}Control of Pollution Act 1974 (licences to dispose of waste) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (3) (duty of recipient of application for licence where planning permission is in force)—
- (a) for the words “Where a disposal authority receives an application” there shall be substituted the words “ Where an application has been received ”; and
 - (b) for the words “the authority”, where first occurring, there shall be substituted the words “ the appropriate Agency ” and, where secondly occurring, there shall be substituted the words “ that Agency ”.
- (3) In subsection (4) (duty of disposal authority to refer to National Rivers Authority etc proposals to issue licences)—
- (a) for the words “a disposal authority” there shall be substituted the words “ the appropriate Agency ”;
 - (b) for the words “the authority” there shall be substituted the words “ that Agency ”;
 - (c) for paragraph (a), there shall be substituted—
 - “(a) to refer the proposal to any collection authority whose area includes any part of the relevant land; and”;
 - (d) in paragraph (b), for the words “the disposal authority”, in both places where they occur, there shall be substituted the words “ that Agency ”; and
 - (e) the words following paragraph (b) (reference of proposal to Secretary of State in certain cases) shall cease to have effect.
- (4) Subsection (5) (separate provision for Scotland) shall cease to have effect.

Marginal Citations

M1 1974 c. 40.

- 20 (1) Section 6 of that Act (provisions supplementary to section 5) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (2) (conditions which may be included in disposal licences)—
- (a) for the words “the disposal authority which issues it” there shall be substituted the words “ the appropriate Agency ”; and
 - (b) for the words “the authority” there shall be substituted the words “ that Agency ”.

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- (3) In subsection (3) (offence of contravening a licence condition without reasonable excuse) for the words “the disposal authority which issued the licence” there shall be substituted the words “ the Environment Agency ”.
- (4) In subsection (4) (duty of each disposal authority to maintain registers etc)—
- (a) for the words “each disposal authority” there shall be substituted the words “ the Environment Agency and of SEPA ”;
 - (b) for paragraph (a) there shall be substituted—
 - “(a) to maintain a register containing copies of all disposal licences which are for the time being in force in respect of land in England and Wales or, as the case may be, Scotland;”
 - and
 - (c) in paragraph (c), for the words “the authority” there shall be substituted the words “ that Agency ”.
- (5) In subsection (5) (applications deemed to be refused if not granted within two months of receipt)—
- (a) for the words “a disposal authority receives an application duly made to it for a disposal licence” there shall be substituted the words “ a duly made application for a disposal licence was received ”;
 - (b) for the words “the authority”, in the first two places where they occur, there shall be substituted the words “ the appropriate Agency ”; and
 - (c) for the words “the authority”, wherever else occurring, there shall be substituted the words “ that Agency ”.
- 21 (1) Section 7 of that Act (variation of conditions and revocation of licences) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (modification of conditions of disposal licences issued by disposal authorities)—
- (a) the words “issued by a disposal authority” shall be omitted; and
 - (b) for the words “the authority”, where first occurring, there shall be substituted the words “ the appropriate Agency ” and, wherever else occurring, there shall be substituted the words “ that Agency ”.
- (3) In subsection (2) (application of section 5(4))—
- (a) the words “or, in relation to Scotland, subsection (5)” shall cease to have effect; and
 - (b) for paragraphs (a) and (b) there shall be substituted—
 - “(a) the Environment Agency or SEPA, as the case may be, may postpone the reference in pursuance of the said subsection (4) so far as it considers that by reason of an emergency it is appropriate to do so; and
 - (b) the Environment Agency or SEPA, as the case may be, may disregard any collection authority for the purposes of the preceding provisions of this subsection in relation to a modification which, in the opinion of that Agency, will not affect that authority.”
- (4) In subsection (4) (revocation of disposal licences issued by disposal authorities)—
- (a) the words “issued by a disposal authority” shall be omitted;

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- (b) for the words “the authority”, where first occurring, there shall be substituted the words “ the appropriate Agency ” and, in the other place where they occur, there shall be substituted the words “ that Agency ”.
- 22 (1) Section 8 of that Act (transfer and relinquishment of licences) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (transfer of licences)—
- (a) for the words “the authority which issued the licence” there shall be substituted the words “ the appropriate Agency ”; and
- (b) for the words “the authority”, in both places where they occur, there shall be substituted the words “ that Agency ”.
- (3) In subsection (4) (cancellation of licences)—
- (a) for the words “the authority which issued it” there shall be substituted the words “ the appropriate Agency ”; and
- (b) for the words “the authority”, in the other place where they occur, there shall be substituted the words “ that Agency ”.
- 23 (1) Section 9 of that Act (supervision of licensed activities) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (duties of the authority which issued the licence) for the words “the authority which issued the licence” there shall be substituted the words “ the appropriate Agency ”.
- (3) In subsection (2) (powers of entry of authorised officers to carry out works in an emergency)—
- (a) for the words “a disposal authority” there shall be substituted the words “ the Environment Agency or SEPA, as the case may be, ”; and
- (b) for the words “the authority”, wherever occurring, there shall be substituted the words “ that Agency ”.
- (4) In subsection (3) (recovery of certain expenditure from licence holders)—
- (a) for the words “a disposal authority” there shall be substituted the words “ the Environment Agency or SEPA ”; and
- (b) for the words “the authority” there shall be substituted the word “ it ”.
- (5) In subsection (4) (breach of conditions of licences)—
- (a) for the words “a disposal authority” there shall be substituted the words “ the appropriate Agency ”;
- (b) the words “issued by the authority” shall be omitted; and
- (c) for the words “the authority”, wherever else occurring, there shall be substituted the words “ that Agency ”.
- 24 (1) Section 10 of that Act (appeals to Secretary of State from decisions with respect to licences) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (duty of disposal authority concerned to implement Secretary of State’s determination) for the words “the disposal authority concerned” there shall be substituted the words “ the appropriate Agency ”.
- (3) In subsection (3) (cases where the decision under appeal is effective pending the determination of the appeal)—

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- (a) for the words “to a decision of a disposal authority” there shall be substituted the words “ if the decision in question is a decision ”;
 - (b) for the words “in the opinion of the authority” there shall be substituted the words “ in the opinion of the body making the decision ”;
 - (c) for the words “the authority acted” there shall be substituted the words “ that body acted ”; and
 - (d) in paragraph (b), for the words “the authority” there shall be substituted the words “ the appropriate Agency ”.
- 25 In section 11 of that Act (special provision for land occupied by disposal authorities: resolutions etc) subsections (1) to (11) shall cease to have effect.
- 26 (1) Section 16 of that Act (removal of waste deposited in breach of licensing provisions) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (power of disposal or collection authority to serve notice on occupier of land in its area) for the words from “in the area” to “the authority may” there shall be substituted the words “ in contravention of section 3(1) of this Act, any authority to which this section applies may ”.
- (3) After subsection (7) there shall be added—
- “(8) The authorities to which this section applies are—
- (a) the appropriate Agency;
 - (b) any collection authority in whose area the land mentioned in subsection (1) above is situated.”
- 27 In section 30 of that Act (interpretation of Part I) in subsection (1)—
- (a) the following definition shall be inserted at the appropriate place—
 - ““the appropriate Agency” means—
 - (a) in relation to England and Wales, the Environment Agency;
 - (b) in relation to Scotland, SEPA;”;
 - (b) for the definition of “waste” there shall be substituted—
 - ““waste” has the same meaning as it has in Part II of the ^{M2}Environmental Protection Act 1990 by virtue of section 75(2) of that Act;”;
 - (c) the words from “and for the purposes” to the end (which provide a presumption that anything discarded is waste unless the contrary is proved) shall cease to have effect.

Commencement Information

II Sch. 22 para. 27 not in force at Royal Assent see s. 125(3); Sch. 22 para. 27(a) in force at 1.4.1996 by [S.I. 1996/186, art 3](#)

Marginal Citations

M2 1990 c. 43.

- 28 In section 62(2)(a) of that Act (exceptions to restrictions on the operation of loudspeakers in streets), as it has effect in relation to England and Wales, for the words “National Rivers Authority” there shall be substituted the words “ Environment Agency ”.

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- 29 (1) The ^{M3}Control of Pollution Act 1974, as it has effect in relation to Scotland, shall be amended in accordance with the following provisions of this paragraph.
- (2) Subject to the amendments made by the following provisions of this paragraph, for the words “a river purification authority”, “the river purification authority”, “river purification authority”, “river purification authorities”, “the river purification authorities”, “each river purification authority” and “any river purification authority”, in each place where they occur in the undernoted provisions, there shall be substituted the words “SEPA ”
- section 30A(2)(a) and (3);
 - section 30C(1);
 - section 30D;
 - section 31(4)(d) and (6);
 - section 31A(2);
 - section 33(1);
 - sections 34 to 39;
 - section 41;
 - sections 46 to 51;
 - section 96(3); and
 - Schedule 1A.
- (3) In section 30A(2)(a) (Secretary of State to deposit maps showing fresh-water limits of every relevant river or watercourse) the words “in the area of that authority” shall cease to have effect.
- (4) In section 30C (water quality objectives)—
- (a) in subsection (1) (Secretary of State to establish water quality objectives), the words “within the area of that authority” shall cease to have effect;
 - (b) in subsection (3)(b) (Secretary of State to review water quality objectives) for the words “the river purification authority on which that notice has been served” there shall be substituted the words “SEPA ”;
 - (c) in subsection (4) (Secretary of State to give notice and consider representations when reviewing water quality objectives)—
 - (i) the words “in the area of a river purification authority” shall cease to have effect; and
 - (ii) in paragraph (a) for the words “that authority” there shall be substituted the words “SEPA ”;
 - (d) in subsection (5)(b) (form of notice to be given by the Secretary of State when varying water quality objectives) for the words “the authority” there shall be substituted the words “SEPA ”; and
 - (e) in subsection (6) (Secretary of State to serve further notice where water quality objectives remain unchanged)—
 - (i) the words “in the area of a river purification authority” shall cease to have effect; and
 - (ii) for the words “that authority” there shall be substituted the words “SEPA ”.
- (5) In section 30E (consultation and collaboration)—
- (a) for the word “their” there shall be substituted the word “its ”;

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- (b) for the words “river purification authorities” there shall be substituted the words “SEPA ”; and
 - (c) for the words “National Rivers Authority” there shall be substituted the words “ Environment Agency ”.
- (6) In section 31 (control of pollution of rivers and coastal waters etc.)—
- (a) in subsection (4)(b) (Secretary of State power to restrict or prohibit prescribed activities in designated areas) for the words “the river purification authority in whose area the place is situated” there shall be substituted the words “SEPA ”; and
 - (b) in subsection (6) (power to make byelaws to prohibit or regulate prescribed activities)—
 - (i) for the words “the authority” there shall be substituted the word “ it ”; and
 - (ii) the words “in its area” shall cease to have effect.
- (7) Section 31D (powers of entry in relation to agreements under section 31B) shall cease to have effect.
- (8) In section 33(1) (power to make byelaws regulating or prohibiting sanitary appliances on vessels)—
- (a) for the words “the authority” where they first occur there shall be substituted the word “ it ”; and
 - (b) the words “in the area of the authority” shall cease to have effect.
- (9) In section 34 (consents for discharges of trade and sewage effluent etc.)—
- (a) for the words “the authority” and “the authority’s” in each place where they occur (other than the last reference in subsection (2)) there shall be substituted the words “SEPA ” and “SEPA’s ” respectively;
 - (b) in subsection (2) (disposal of application)—
 - (i) for the words “a river purification authority to which an application for consent is” there shall be substituted the words “SEPA, in relation to an application for consent ”;
 - (ii) for the word “three” there shall be substituted the word “ four ”; and
 - (iii) for the words “the authority shall be deemed to have refused the consent” there shall be substituted the words “ the applicant may treat the consent applied for as having been refused ”; and
 - (c) in subsection (3) (consent not to relate to discharges which occurred prior to consent) the words “in its area” shall cease to have effect.
- (10) In the following provisions, for the words “an authority”, “any authority”, “the authority”, “the authorities” and “the relevant river purification authority” in each place where they occur there shall be substituted the words “SEPA ”
- sections 35 to 39;
 - section 41;
 - sections 46 to 49; and
 - Schedule 1A, paragraph 2.
- (11) In section 36 (provisions supplementary to sections 34 and 35)—
- (a) in subsection (1), after the word “shall” there shall be inserted the words “ , subject to subsections (2A) and (2B) below, ”;

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- (b) after subsection (2) there shall be inserted the following subsections—
- “(2A) A person who proposes to make, or has made, an application to SEPA for consent in pursuance of section 34 of this Act may apply to the Secretary of State within a prescribed period for a certificate providing that subsection (1) above shall not apply to that application.
- (2B) If the Secretary of State is satisfied that—
- (a) it would be contrary to the interests of national security; or
- (b) it would prejudice to an unreasonable degree the commercial interests of any person, not to issue a certificate applied for under subsection (2A) above, he may issue the certificate and, if he does so, subsection (1) above shall not apply to the application specified in the certificate.”; and
- (c) in subsection (6), for the word “three” there shall be substituted the word “four”.
- (12) In section 37(1) (revocation of consents and alteration and imposition of conditions), for the words from the beginning to “consent” in the second place where it occurs there shall be substituted the words “SEPA may from time to time review any consent given in pursuance of section 34 of this Act”.
- (13) In section 38 (restriction as to variation and revocation of consent and of previous variation), in each of subsections (1) and (2), for the word “two” there shall be substituted the word “four”.
- (14) After section 38 there shall be inserted—

“38A General review of consents.

- (1) If it appears appropriate to the Secretary of State to do so he may at any time direct SEPA to review—
- (a) the consents given under section 34 of this Act; or
- (b) any description of such consents,
- and the conditions (if any) to which those consents are subject.
- (2) A direction given by virtue of subsection (1) above—
- (a) shall specify the purpose for which; and
- (b) may specify the manner in which,
- the review is to be conducted.
- (3) After carrying out the review, SEPA shall submit to the Secretary of State its proposals (if any) for—
- (a) the modification of the conditions of any consent reviewed pursuant to the direction; or
- (b) in the case of any such consent which is unconditional, subjecting the consent to conditions.
- (4) Where the Secretary of State has received any proposals under subsection (3) above in relation to any consent he may, if it appears appropriate to him to do so, direct SEPA, in relation to that consent—
- (a) to make modifications of the conditions of the consent; or

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- (b) in the case of an unconditional consent, to subject the consent to conditions.
- (5) A direction given by virtue of subsection (4) above may direct SEPA to do, in relation to any such consent, only—
 - (a) any such thing as SEPA has proposed should be done in relation to that consent; or
 - (b) any such thing with such modifications as appear to the Secretary of State to be appropriate.”.
- (15) In section 39 (appeals to Secretary of State)—
 - (a) in subsection (1), in each of paragraphs (b) and (c), for the words “the preceding section” there shall be substituted the words “ section 38 of this Act ”;
 - (b) in subsection (5), for the words “terms and period as are” there shall be substituted the words “ period as is ”;
 - (c) after that subsection there shall be inserted the following subsections—
 - “(5A) Subject to subsection (5B) below, where a question is referred to the Secretary of State in pursuance of subsection (1)(b) above, the revocation of the consent or, as the case may be, the modification of the conditions of the consent or the provision that the consent (having been unconditional) shall be subject to conditions, shall not take effect while the reference is pending.
 - (5B) Subsection (5A) above shall not apply to a reference where the notice effecting the revocation, modification or provision in question includes a statement that in the opinion of SEPA it is necessary for the purpose of preventing or, where that is not practicable, minimising—
 - (a) the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter, or
 - (b) harm to human health,
 that that subsection should not apply.
 - (5C) Where the reference falls within subsection (5B) above, if, on the application of the holder or former holder of the consent, the Secretary of State (or other person determining the question referred) determines that SEPA acted unreasonably in excluding the application of subsection (5A) above, then—
 - (a) if the reference is still pending at the end of the day on which that determination is made, subsection (5A) above shall apply to the reference from the end of that day; and
 - (b) the holder or former holder of the consent shall be entitled to recover compensation from SEPA in respect of any loss suffered by him in consequence of the exclusion of the application of that subsection;
 and any dispute as to a person’s entitlement to such compensation or as to the amount of it shall be determined by a single arbiter appointed, in default of agreement between the parties concerned, by the Secretary of State on the application of any of the parties.”; and
 - (d) at the end there shall be added—

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- “(7) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals).
- (8) In this section “the holder”, in relation to a consent, is the person who has the consent.”
- (16) Section 40(4) (transitional provisions relating to consents) shall cease to have effect.
- (17) In section 41(1) (maintenance of registers)—
- (a) after the words “prescribed particulars of” there shall be inserted the words “or relating to”;
 - (b) the following provisions shall cease to have effect—
 - (i) in paragraph (c) (information contained in registers) the words “(except section 40(4))”;
 - (ii) in paragraph (d) (duty to maintain registers of samples of effluent), sub-paragraph (ii); and
 - (iii) paragraph (e) (duty to register certain notices);
 - (c) there shall be added at the end the following paragraphs—
 - (f) enforcement notices served under section 49A of this Act;
 - (g) directions given by the Secretary of State in relation to SEPA’s functions under this Part of this Act;
 - (h) convictions, for offences under this Part of this Act, of persons who have the benefit of consents under section 34 of this Act;
 - (j) information obtained or furnished in pursuance of conditions of such consents;
 - (k) works notices under section 46A of this Act;
 - (l) appeals under section 46C of this Act;
 - (m) convictions for offences under section 46D of this Act; and
 - (n) such other matters relating to the quality of water as may be prescribed.”
- (18) In section 41(2) (registers to be available for inspection by, and facilities for obtaining copies of entries to be afforded to, the public), after paragraph (b) there shall be added the words— “ and, for the purposes of this subsection, places may be prescribed at which any such registers or facilities as are mentioned in paragraph (a) or (b) above are to be available or afforded to the public in pursuance of the paragraph in question. ”
- (19) At the end of section 41 there shall be added the following subsection—
- “(3) The Secretary of State may give SEPA directions requiring the removal from any register maintained by it under this section of any specified information which is not prescribed for inclusion under subsection (1) of this section or which, by virtue of section 42A or 42B of this Act, ought to have been excluded from the registers.”
- (20) For section 42, there shall be substituted the following sections—

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“42A Exclusion from registers of information affecting national security.

- (1) No information shall be included in a register kept or maintained by SEPA under section 41 of this Act if and so long as, in the opinion of the Secretary of State, the inclusion in such a register of that information, or information of that description, would be contrary to the interests of national security.
- (2) The Secretary of State may, for the purposes of securing the exclusion from registers of information to which subsection (1) of this section applies, give SEPA directions—
 - (a) specifying information, or descriptions of information, to be excluded from their registers; or
 - (b) specifying descriptions of information to be referred to the Secretary of State for his determination;
 and no information to be referred to the Secretary of State in pursuance of paragraph (b) of this subsection shall be included in any such register until the Secretary of State determines that it should be so included.
- (3) SEPA shall notify the Secretary of State of any information it excludes from a register in pursuance of directions under subsection (2) of this section.
- (4) A person may, as respects any information which appears to him to be information to which subsection (1) of this section may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—
 - (a) he shall notify SEPA that he has done so; and
 - (b) no information so notified to the Secretary of State shall be included in any such register until the Secretary of State has determined that it should be so included.

42B Exclusion from registers of certain confidential information.

- (1) No information relating to the affairs of any individual or business shall, without the consent of that individual or the person for the time being carrying on that business, be included in a register kept or maintained by SEPA under section 41 of this Act, if and so long as the information—
 - (a) is, in relation to him, commercially confidential; and
 - (b) is not required to be included in the register in pursuance of directions under subsection (7) of this section;
 but information is not commercially confidential for the purposes of this section unless it is determined under this section to be so by SEPA, or, on appeal, by the Secretary of State.
- (2) Where information is furnished to SEPA for the purpose of—
 - (a) an application for a consent under section 34 of this Act;
 - (b) complying with any condition of such a consent; or
 - (c) complying with a notice under section 93 of this Act,
 then, if the person furnishing it applies to SEPA to have the information excluded from any register kept or maintained by SEPA under section 41 of this Act, on the ground that it is commercially confidential (as regards

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himself or another person), SEPA shall determine whether the information is or is not commercially confidential.

- (3) A determination under subsection (2) of this section must be made within the period of fourteen days beginning with the date of the application and if SEPA fails to make a determination within that period it shall be treated as having determined that the information is commercially confidential.
- (4) Where it appears to SEPA that any information (other than information furnished in circumstances within subsection (2) of this section) which has been obtained by SEPA under or by virtue of any provision of any enactment might be commercially confidential, SEPA shall—
 - (a) give to the person to whom or whose business it relates notice that that information is required to be included in a register kept or maintained by SEPA under section 41 of this Act, unless excluded under this section; and
 - (b) give him a reasonable opportunity—
 - (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and
 - (ii) of making representations to SEPA for the purpose of justifying any such objection;and, if any representations are made, SEPA shall, having taken the representations into account, determine whether the information is or is not commercially confidential.
- (5) Where, under subsection (2) or (4) of this section, SEPA determines that information is not commercially confidential—
 - (a) the information shall not be entered on the register until the end of the period of twenty-one days beginning with the date on which the determination is notified to the person concerned; and
 - (b) that person may appeal to the Secretary of State against the decision;and, where an appeal is brought in respect of any information, the information shall not be entered on the register pending the final determination or withdrawal of the appeal.
- (6) Subsections (2), (4) and (7) of section 49B of this Act shall apply in relation to appeals under subsection (5) of this section; but
 - (a) subsection (4) of that section shall have effect for the purposes of this subsection with the substitution for the words from (“which may” onwards of the words “(which must be held in private)”); and
 - (b) subsection (5) of this section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).
- (7) The Secretary of State may give SEPA directions as to specified information, or descriptions of information, which the public interest requires to be included in registers kept or maintained by SEPA under section 41 of this Act notwithstanding that the information may be commercially confidential.
- (8) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this section at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to SEPA for the information to remain excluded from the register on the ground that it

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is still commercially confidential and SEPA shall determine whether or not that is the case.

- (9) Subsections (5) and (6) of this section shall apply in relation to a determination under subsection (8) of this section as they apply in relation to a determination under subsection (2) or (4) of this section.
- (10) The Secretary of State may prescribe the substitution (whether in all cases or in such classes or descriptions of case as may be prescribed) for the period for the time being specified in subsection (3) above of such other period as he considers appropriate.
- (11) Information is, for the purposes of any determination under this section, commercially confidential, in relation to any individual or person, if its being contained in register would prejudice to an unreasonable degree the commercial interests of that individual or person.”
- (21) In section 46 (operations to remedy or forestall pollution of water)—
- (a) in subsection (1)—
- (i) at the beginning there shall be inserted the words “ Subject to subsection (1B) below, ”; and
- (ii) the words “in its area” where they first occur and “in its area or elsewhere” shall cease to have effect;
- (b) after subsection (1) there shall be inserted—
- “(1A) In either case mentioned in subsection (1) of this section, SEPA shall be entitled to carry out investigations for the purpose of establishing the source of the matter and the identity of the person who has caused or knowingly permitted it to be present in controlled waters or at a place from which it was likely, in the opinion of SEPA, to enter controlled waters.
- (1B) Without prejudice to the power of SEPA to carry out investigations under subsection (1A) above, the power conferred by subsection (1) above to carry out operations shall be exercisable only in a case where—
- (a) SEPA considers it necessary to carry out forthwith any operations falling within paragraph (a) or (b) of subsection (1) above; or
- (b) it appears to SEPA, after reasonable inquiry, that no person can be found on whom to serve a works notice under section 46A of this Act.”;
- (c) in subsection (2) after the words “any operations” there shall be inserted the words “ or investigations ”;
- (d) in subsection (3)(b)—
- (i) after the words “any operations” there shall be inserted the words “ or investigations ”; and
- (ii) after the words “an abandoned mine” there shall be inserted the words “ or an abandoned part of a mine ”; and
- (e) after subsection (3) there shall be inserted—

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“(3A) Subsection (3)(b) of this section shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.

(3B) Subsections (5) and (6) of section 30J above shall apply in relation to subsections (3) and (3A) above as they apply in relation to subsections (3) and (4) of that section.”.

(22) After section 46 there shall be inserted the following sections—

“46A Notices requiring persons to carry out anti-pollution operations.

(1) Subject to the following provisions of this section, where it appears to SEPA that any poisonous, noxious or polluting matter or any solid waste matter is likely to enter, or to be or to have been present in, any controlled waters, SEPA shall be entitled to serve a works notice on any person who, as the case may be,—

- (a) caused or knowingly permitted the matter in question to be present at the place from which it is likely, in the opinion of SEPA, to enter any controlled waters; or
- (b) caused or knowingly permitted the matter in question to be present in any controlled waters.

(2) For the purposes of this section, a “works notice” is a notice requiring the person on whom it is served to carry out such of the following operations as may be specified in the notice, that is to say—

- (a) in a case where the matter in question appears likely to enter any controlled waters, operations for the purpose of preventing it from doing so; or
- (b) in a case where the matter appears to be or to have been present in any controlled waters, operations for the purpose—
 - (i) of removing or disposing of the matter;
 - (ii) of remedying or mitigating any pollution caused by its presence in the waters; or
 - (iii) so far as it is reasonably practicable to do so, of restoring the waters, including any flora and fauna dependent on the aquatic environment of the waters, to their state immediately before the matter became present in the waters.

(3) A works notice—

- (a) must specify the periods within which the person on whom it is served is required to do each of the things specified in the notice; and
- (b) is without prejudice to the powers of SEPA by virtue of section 46(1B)(a) of this Act.

(4) Before serving a works notice on any person, SEPA shall reasonably endeavour to consult that person concerning the operations which are to be specified in the notice.

(5) The Secretary of State may by regulations make provision for or in connection with—

- (a) the form or content of works notices;

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- (b) requirements for consultation, before the service of a works notice, with persons other than the person on whom that notice is to be served;
 - (c) steps to be taken for the purposes of any consultation required under subsection (4) above or regulations made by virtue of paragraph (b) above; and
 - (d) any other steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of a works notice.
- (6) A works notice shall not be regarded as invalid, or as invalidly served, by reason only of any failure to comply with the requirements of subsection (4) above or of regulations made by virtue of paragraph (b) of subsection (5) above.
- (7) Nothing in subsection (1) above shall entitle SEPA to require the carrying out of any operations which would impede or prevent the making of any discharge in pursuance of a consent given by SEPA by virtue of section 34 of this Act.
- (8) No works notice shall be served on any person requiring him to carry out any operations in respect of water from an abandoned mine or an abandoned part of a mine which that person permitted to reach such a place as is mentioned in subsection (1)(a) above or to enter any controlled waters.
- (9) Subsection (8) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.
- (10) Subsections (5) and (6) of section 30J of this Act shall apply in relation to subsections (8) and (9) above as they apply in relation to subsections (3) and (4) of that section.
- (11) Where SEPA—
- (a) carries out any such investigations as are mentioned in section 46(1A) of this Act, and
 - (b) serves a works notice on a person in connection with the matter to which the investigations relate,
- it shall (unless the notice is quashed or withdrawn) be entitled to recover the costs or expenses reasonably incurred in carrying out those investigations from that person.
- (12) The Secretary of State may, if he thinks fit in relation to any person, give directions to SEPA as to whether or how it should exercise its powers under this section.

46B Grant of, and compensation for, rights of entry etc.

- (1) A works notice may require a person to carry out operations in relation to any land or waters notwithstanding that he is not entitled to carry out those operations.
- (2) Any person whose consent is required before any operations required by a works notice may be carried out shall grant, or join in granting, such rights in relation to any land or waters as will enable the person on whom the works

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notice is served to comply with any requirements imposed by the works notice.

- (3) Before serving a works notice, SEPA shall reasonably endeavour to consult every person who appears to it—
 - (a) to be the owner or occupier of any relevant land, and
 - (b) to be a person who might be required by subsection (2) above to grant, or join in granting, any rights, concerning the rights which that person may be so required to grant.
- (4) A works notice shall not be regarded as invalid, or as invalidly served, by reason only of any failure to comply with the requirements of subsection (3) above.
- (5) A person who grants, or joins in granting, any rights pursuant to subsection (2) above shall be entitled, on making an application within such period as may be prescribed and in such manner as may be prescribed to such person as may be prescribed, to be paid by the person on whom the works notice in question is served compensation of such amount as may be determined in such manner as may be prescribed.
- (6) Without prejudice to the generality of the regulations that may be made by virtue of subsection (5) above, regulations by virtue of that subsection may make such provision in relation to compensation under this section as may be made by regulations by virtue of subsection (4) of section 35A of the ^{M4}Environmental Protection Act 1990 in relation to compensation under that section.
- (7) In this section—

“relevant land” means—

 - (a) any land or waters in relation to which the works notice in question requires, or may require, operations to be carried out; or
 - (b) any land adjoining or adjacent to that land or those waters;

“works notice” means a works notice under section 46A of this Act.

46C Appeals against works notices.

- (1) A person on whom a works notice is served may, within the period of twenty-one days beginning with the day on which the notice is served, appeal against the notice to the Secretary of State.
- (2) On any appeal under this section the Secretary of State—
 - (a) shall quash the notice, if he is satisfied that there is a material defect in the notice; but
 - (b) subject to that, may confirm the notice, with or without modification, or quash it.
- (3) The Secretary of State may by regulations make provision with respect to—
 - (a) the grounds on which appeals under this section may be made; or
 - (b) the procedure on any such appeal.

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- (4) Regulations under subsection (3) above may (among other things)—
- (a) include provisions comparable to those in section 290 of the ^{M5}Public Health Act 1936 (appeals against notices requiring the execution of works);
 - (b) prescribe the cases in which a works notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;
 - (c) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the works notice against which he is appealing;
 - (d) prescribe the cases in which the appellant may claim that a works notice should have been served on some other person and prescribe the procedure to be followed in those cases;
 - (e) make provision as respects—
 - (i) the particulars to be included in the notice of appeal;
 - (ii) the persons on whom notice of appeal is to be served and the particulars, if any, which are to accompany the notice; or
 - (iii) the abandonment of an appeal.
- (5) In this section “works notice” means a works notice under section 46A of this Act.
- (6) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals).

46D Consequences of not complying with a works notice.

- (1) If a person on whom SEPA serves a works notice fails to comply with any of the requirements of the notice, he shall be guilty of an offence.
 - (2) A person who commits an offence under subsection (1) above shall be liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000 or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
 - (3) If a person on whom a works notice has been served fails to comply with any of the requirements of the notice, SEPA may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by SEPA in doing it.
 - (4) If SEPA is of the opinion that proceedings for an offence under subsection (1) above would afford an ineffectual remedy against a person who has failed to comply with the requirements of a works notice, SEPA may take proceedings in any court of competent jurisdiction for the purpose of securing compliance with the notice.
 - (5) In this section “works notice” means a works notice under section 46A of this Act.”.
- (23) In section 47 (duty to deal with waste from vessels etc.)—
- (a) in subsection (1) (duty), the words “in its area” shall cease to have effect; and

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- (b) in subsection (2) (provision of facilities), the words “in the authority’s area” shall cease to have effect.
- (24) In section 48(1) (power to exclude unregistered vessels from rivers etc.) the words “in its area” shall cease to have effect.
- (25) In section 49 (deposit and vegetation in rivers etc) at the end there shall be added—
 - “(5) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals).”
- (26) After that section there shall be inserted—

“49A Enforcement notices as respects discharge consents.

- (1) If SEPA is of the opinion that the holder of a relevant consent is contravening any condition of the consent, or is likely to contravene any such condition, it may serve on him a notice (an “enforcement notice”).
- (2) An enforcement notice shall—
 - (a) state that SEPA is of the said opinion;
 - (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise;
 - (c) specify the steps that must be taken to remedy the contravention or, as the case may be, to remedy the matters making it likely that the contravention will arise; and
 - (d) specify the period within which those steps must be taken.
- (3) Any person who fails to comply with any requirement imposed by an enforcement notice shall be guilty of an offence and liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000 or to both;
 - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) If SEPA is of the opinion that proceedings for an offence under subsection (3) above would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice, SEPA may take proceedings in any court of competent jurisdiction for the purpose of securing compliance with the notice.
- (5) The Secretary of State may, if he thinks fit in relation to any person, give to SEPA directions as to whether it should exercise its powers under this section and as to the steps which must be taken.
- (6) In this section—
 - “relevant consent” means a consent for the purposes of section 30J(7)(a), 34 or 49(1) of this Act; and
 - “the holder”, in relation to a relevant consent, is the person who has the consent in question.

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49B Appeals against enforcement notices.

- (1) A person upon whom an enforcement notice has been served under section 49A of this Act may appeal to the Secretary of State.
 - (2) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc.).
 - (3) An appeal under this section shall, if and to the extent a requirement to do so is prescribed, be advertised in the manner prescribed.
 - (4) If either party to the appeal so requests or the Secretary of State so decides, an appeal shall be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private).
 - (5) On the determination of an appeal under this section, the Secretary of State may either quash or affirm the enforcement notice and, if he affirms it, may do so either in its original form or with such modifications as he may in the circumstances think fit.
 - (6) The bringing of an appeal under this section shall not have the effect of suspending the operation of the notice appealed against.
 - (7) The period within which and the manner in which appeals under this section are to be brought and the manner in which they are to be considered shall be as prescribed.”
- (27) In section 50 (investigation of water pollution problems arising from closures of mines) the words “in its area” shall cease to have effect.
 - (28) Sections 53 (charges in respect of consents to certain discharges in Scotland), 54 (directions to the river purification authority), 55 (discharges by islands councils) and 56(4) (meaning of the area of a river purification authority) shall cease to have effect.
 - (29) In section 56(1) (interpretation of Part II), the following definition shall be inserted in the appropriate place in alphabetical order—
““operations” includes works;”.
 - (30) In section 90(3) (establishment charges etc. in relation to Scotland), for the words from “a river” to the end there shall be substituted the words “SEPA ”.
 - (31) Section 91(5)(a) (application of that section to Scotland) shall cease to have effect.
 - (32) In section 96(3) (local inquiries) the words from “but as if” to the end shall cease to have effect.
 - (33) In section 98 (interpretation of Part V), for paragraph (b) of the definition of “relevant authority” there shall be substituted —
“(b) in Scotland—
(i) as respects sections 91 and 92, a council constituted under section 2 of the ^{M6}Local Government etc. (Scotland) Act 1994; and
(ii) as respects this Part other than those sections, the Secretary of State, SEPA or a council constituted

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under section 2 of the Local Government etc. (Scotland) Act 1994.”.

(34) In section 104(1) (orders and regulations) the words “59” shall cease to have effect.

(35) In section 105 (interpretation etc.— general) there shall be inserted in the appropriate place—

““SEPA” means the Scottish Environment Protection Agency;”

Commencement Information

I2 Sch. 22 para. 29 partly in force; Sch. 22 para. 29 not in force at Royal Assent see s. 125(3); Sch. 22 para. 29(1)(22) in force for specified purposes at 12.10.1995 by [S.I. 1995/2649](#), [art. 2\(j\)\(ii\)](#); Sch. 22 para. 29(1) in force at 1.4.1996 insofar as not already in force and Sch. 22 para. 29(2)-(20)(21)(a)(ii)(23)-(25)(27)-(35) in force at 1.4.1996 by [S.I. 1996/186](#), [art. 3](#); Sch. 22 para. 29(26) in force for S. at 1.1.2001 insofar as not already in force by [S.S.I. 2000/433](#), [art. 2](#)

Marginal Citations

M3 1974 c. 40.
M4 1990 c. 43.
M5 1936 c. 49.
M6 1994 c. 39.

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