

*Status: Point in time view as at 14/03/2012. This version of this part contains provisions that are prospective.*

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## SCHEDULES

### SCHEDULE 23 **E+W+S**

#### TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS

#### **PART I** **E+W+S**

##### GENERAL TRANSITIONAL PROVISIONS AND SAVINGS

###### *Interpretation of Part I*

- 1 In this Part of this Schedule, the “transfer date” has the same meaning as in Part I of this Act.

###### *Directions*

- 2 Any directions given to the National Rivers Authority for the purposes of section 19 of the <sup>M1</sup>Water Resources Act 1991 shall have effect on and after the transfer date as directions given to the Agency for the purposes of section 6(2) of this Act.

###### **Marginal Citations**

**M1** 1991 c. 57.

###### *Regional and local fisheries advisory committees*

- 3 If and so long as the Agency requires, on and after the transfer date any advisory committee established and maintained before the transfer date by the National Rivers Authority under section 8(1) of the Water Resources Act 1991 shall be treated as if—
- (a) it had been established by the Agency,
  - (b) the area by reference to which that committee was established had been determined by the Agency, and
  - (c) in the case of a regional advisory committee, the chairman of that committee had been appointed,
- in accordance with section 13 of this Act.

###### *Charging schemes*

- 4 (1) Without prejudice to section 55 of this Act, any charging scheme—
- (a) which relates to any transferred functions,
  - (b) which was made before the transfer date, and
  - (c) which is in force immediately before that date or would (apart from this Act) have come into force at any time after that date,

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shall, subject to the provisions of section 41 of this Act, have effect on and after the transfer date, with any necessary modifications, and for the remainder of the period for which the charging scheme would have been in force apart from any repeal made by this Act, as a scheme made under that section by the transferee in accordance with section 42 of this Act.

(2) Any costs or expenses incurred before the transfer date by any person in carrying out functions transferred to a new Agency by or under this Act may be treated for the purposes of subsections (3) and (4) of section 42 of this Act as costs or expenses incurred by that new Agency in carrying out those functions.

(3) In this paragraph—

“charging scheme” means a scheme specifying, or providing for the determination of, any fees or charges;

“new Agency” means the Agency or SEPA;

“transferred functions” means any functions which, by virtue of any provision made by or under this Act, become functions of a new Agency and

“the transferee” means the new Agency whose functions they so become.

*Preparation of reports*

F15 .....

**Textual Amendments**

F1 Sch. 23 para. 5 repealed (22.7.2004) by *Statute Law (Repeals) Act 2004 (c. 14)*, **Sch. 1 Pt. 13**

*Preparation of accounts*

6 Notwithstanding the repeal by this Act of subsection (9) of section 135 of the <sup>M2</sup>Local Government (Scotland) Act 1973 (application to river purification board of certain provisions of that Act), the provisions applied to a river purification board by virtue of that section shall, as respects the period between the end of the last financial year in respect of which accounts have been made up by the board and the transfer date, continue to apply in relation to the board; but anything which shall or may be done or enjoyed, or any access, inspection or copying which shall or may be allowed, under or by virtue of any of those provisions or of section 118 of that Act (financial returns) by, or by an officer of, the board shall, or as the case may be may, after the transfer date, be done, enjoyed or allowed by, or by an officer of, SEPA in place of the board or of an officer of the board.

**Marginal Citations**

M2 1973 c. 65.

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### *Membership of Welsh National Park authorities*

PROSPECTIVE

- 7 (1) Where a body corporate constituted as a Welsh National Park planning board becomes, or has become, the National Park authority in relation to the National Park in question by virtue of an order under section 63 of this Act made by virtue of section 64(1) of this Act, paragraph 2 of Schedule 7 to this Act shall, in its application in relation to that National Park authority at any time before 31st March 1997, have effect with the following modifications.
- (2) In sub-paragraph (5)—
- (a) in paragraph (a), after the word “council” there shall be inserted the words “or, if earlier, until the council which appointed him as a local authority member of that authority is excluded from the councils by whom such members of that authority are to be appointed”; and
- (b) in paragraph (b), after the word “cessation” there shall be inserted the words “or exclusion”.
- (3) In sub-paragraph (6), after the words “Sub-paragraph (5)(a) above” there shall be inserted the words “, so far as relating to cessation of membership of a council,”.
- (4) In this paragraph, “Welsh National Park planning board” means a National Park planning board, as defined in section 64 of this Act, for the area of a National Park in Wales.

### *The Alkali, &c., Works Regulation Act 1906*

- 8 Any dispensation which was granted under the proviso to subsection (5) of section 9 of the <sup>M3</sup>Alkali, &c, Works Regulation Act 1906 before the transfer date and which would, apart from this Act, have been in force on that date shall have effect on and after that date notwithstanding the repeal of that proviso by this Act.

#### **Marginal Citations**

**M3** 1906 c. 14.

### *The Public Records Act 1958*

- 9 (1) Such of the administrative and departmental records (in whatever form or medium) of a transferor as are transferred to and vested in the Agency by or under section 3 of this Act shall be treated for the purposes of the <sup>M4</sup>Public Records Act 1958 as administrative or departmental records of the Agency.
- (2) In this paragraph, “transferor” means any body or person any or all of whose administrative and departmental records are transferred to and vested in the Agency by or under section 3 of this Act.

#### **Marginal Citations**

**M4** 1958 c. 51.

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*The Parliamentary Commissioner Act 1967*

- 10 (1) Nothing in this Act shall prevent the completion on or after the transfer date of any investigation begun before that date under the <sup>M5</sup>Parliamentary Commissioner Act 1967 in pursuance of a complaint made in relation to the National Rivers Authority.
- (2) Nothing in this Act shall prevent the making on or after the transfer date of a complaint under that Act in respect of any action which was taken by or on behalf of the National Rivers Authority before that date.
- (3) Notwithstanding the amendment of that Act by paragraph 11 of Schedule 22 to this Act, the provisions of that Act shall have effect on and after the transfer date in relation to any complaint to which sub-paragraph (1) or (2) above applies and to its investigation as they would have had effect before that date; but, in relation to any such complaint, the Agency shall on and after that date stand in the place of the National Rivers Authority for the purposes of this paragraph.

**Marginal Citations**

**M5** 1967 c. 13.

*The Local Government Act 1974*

PROSPECTIVE

- 11 (1) Where for any year, a Rate Support Grant Report under section 60 of the <sup>M6</sup>Local Government, Planning and Land Act 1980, or a supplementary report under section 61 of that Act, has effect to determine the amount of supplementary grants to be paid under section 7 of the <sup>M7</sup>Local Government Act 1974 to the council of a county or county borough in Wales, and at any time—
- (a) after that report or, as the case may be, that supplementary report is approved by a resolution of the House of Commons, but
- (b) not later than the end of that year,
- a body corporate constituted as a National Park planning board for a National Park the whole or any part of which is included in that county or county borough becomes the National Park authority for that National Park by virtue of section 64 of this Act, those supplementary grants shall, subject to the provisions of any, or any further, such supplementary report, continue to be paid for that year notwithstanding that that body corporate has ceased to be a National Park planning board.
- (2) In this paragraph—
- “National Park planning board” has the meaning given by section 64(9) of this Act; and
- “year” means a period of 12 months beginning with 1st April.

**Marginal Citations**

**M6** 1980 c. 65.

**M7** 1974 c. 40.

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- 12 (1) Nothing in this Act shall prevent the completion on or after the transfer date by a Local Commissioner of any investigation which he began to conduct before that date and which is an investigation under Part III of the <sup>M8</sup>Local Government Act 1974 in pursuance of a complaint made in relation to the National Rivers Authority.
- (2) Nothing in this Act shall prevent the making on or after the transfer date of a complaint under Part III of that Act in respect of any action which was taken by or on behalf of the National Rivers Authority before that date.
- (3) Notwithstanding the amendment of Part III of that Act by paragraph 18 of Schedule 22 to this Act, the provisions of that Part shall have effect on and after the transfer date in relation to any complaint to which sub-paragraph (1) or (2) above applies and to its investigation as they would have had effect before that date; but, in relation to any such complaint, the Agency shall on and after that date stand in the place of the National Rivers Authority for the purposes of this paragraph.

**Marginal Citations**

**M8** 1974 c. 7.

*The Control of Pollution Act 1974*

- 13 As respects England and Wales, any resolution passed in pursuance of section 11 of the Control of Pollution Act 1974 (special provision for land occupied by disposal authorities: resolutions etc) which is in force immediately before the day on which the repeals in that section made by this Act come into force shall have effect on and after that day as if it were a waste management licence granted by the <sup>M9</sup>Environment Agency under Part II of the <sup>M10</sup>Environmental Protection Act 1990 subject to the conditions specified in the resolution pursuant to subsection (3)(e) of that section.

**Marginal Citations**

**M9** 1990 c. 43.

**M10** 1974 c. 40.

*The Salmon and Freshwater Fisheries Act 1975*

- 14 (1) Any approval or certificate given under or by virtue of section 8(2), 9(1) or 11(4) of the <sup>M11</sup>Salmon and Freshwater Fisheries Act 1975 by a Minister of the Crown before the transfer date shall, so far as is required for continuing its effect on and after that date, have effect as if given by the Agency.
- (2) Any application for the grant of an approval or certificate by a Minister of the Crown under or by virtue of any of the provisions specified in sub-paragraph (1) above which, at the transfer date, is in the process of being determined shall on and after that date be treated as having been made to the Agency.
- (3) Any notice given by a Minister of the Crown under section 11(2) of that Act before the transfer date shall, so far as is required for continuing its effect on and after that date, have effect as if given by the Agency.

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- (4) Any extension of a period granted by a Minister of the Crown under section 11(3) of that Act before the transfer date shall, so far as is required for continuing its effect on and after that date, have effect as if granted by the Agency.
- (5) Without prejudice to section 16 or 17 of the <sup>M12</sup>Interpretation Act 1978, any exemption granted under subsection (1) or (2) of section of the <sup>M13</sup>Salmon and Freshwater Fisheries Act 1975 which is in force immediately before the substitution date shall have effect on and after that date as an exemption granted by the Agency under subsection (2) or, as the case may be, subsection (3) of section 14 of that Act as substituted by paragraph 13 of Schedule 15 to this Act.
- (6) Any grating constructed and placed in a manner and position approved under section 14(3) of that Act as it had effect before the substitution date (including a grating so constructed and placed at any time as a replacement for a grating so constructed and placed) shall, if—
- (a) the approval was in force immediately before the substitution date, and
  - (b) the grating is maintained in accordance with the approval,
- be taken for the purposes of section 14 of that Act, as substituted by paragraph 13 of Schedule 15 to this Act, to be a screen which complies with the requirements of subsection (2)(a) or (3)(a) of that section, according to the location of the grating, and with the requirements of subsections (4) to (6) of that section.
- (7) Any notice given, or objection made, under subsection (2) of section 18 of that Act before the transfer date shall, so far as is required for continuing its effect on and after that date, have effect as a notice given under that subsection as it has effect on and after that date.
- (8) In this paragraph—
- “approval” includes a provisional approval;
- “grating” means a device in respect of which there is in force, immediately before the substitution date, an approval given for the purposes of the definition of “grating” in section 41(1) of the Salmon and Freshwater Fisheries Act 1975 as it had effect before that date;
- “the substitution date” means the date on which paragraph 13 of Schedule 15 to this Act comes into force;
- “the transfer date” means the date which, by virtue of section 56(1) of this Act, is the transfer date for the purposes of Part I of this Act as it applies in relation to the Agency.

#### Commencement Information

- II** Sch. 23 para. 14 wholly in force at 1.1.1999; Sch. 23 para. 14 not in force at Royal Assent see s. 125(3); Sch. 23 para. 14(1)-(4)(7) wholly in force and Sch. 23 para. 14(8) in force for specified purposes at 1.4.1996 by [S.I. 1996/186, art. 3](#); Sch. 23 para. 14(5)(6) wholly in force and Sch. 22 para. 14(8) in force for specified purposes at 1.1.1999 by [S.I. 1995/1983, art. 4](#)

#### Marginal Citations

- M11** 1975 c. 51.  
**M12** 1978 c. 30.  
**M13** 1975 c. 51.

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### The Local Government Finance Act 1988

#### PROSPECTIVE

- 15 (1) Without prejudice to the generality of subsection (4) of section 64 of this Act, where an order has been made under section 63 of this Act by virtue of section 64(1) of this Act designating a date in relation to a Welsh National Park planning board, the body corporate constituted as that board may at any time before the designated date issue a levy by virtue of section 71 of this Act for a year at or before the beginning of which that body becomes the National Park authority for the National Park in question by virtue of section 64 of this Act as if it were the National Park authority for that National Park, notwithstanding that it has not in fact become a National Park authority at the date when it issues the levy.
- (2) Without prejudice to the generality of section 74 of the <sup>M14</sup>Local Government Finance Act 1988, where—
- (a) an order is made under section 63 of this Act by virtue of section 64(1) of this Act designating a date in relation to a Welsh National Park planning board; and
  - (b) the designated date is a date falling after the beginning, but before the end, of a year in respect of which, at the time the order is made, that board has not issued any levy under that section 74,
- that board may nonetheless issue such a levy in respect of that year as if the body corporate constituted as that board was not in fact going to become the National Park authority for the National Park in question by virtue of that order before the end of that year.
- (3) Sub-paragraph (5) below applies in a case where a levy is issued in respect of any year by a Welsh National Park planning board under section 74 of the <sup>M15</sup>Local Government Finance Act 1988 and—
- (a) that levy is issued by that board at a time when no order has been made under section 63 of this Act by virtue of section 64(1) of this Act designating a date in relation to that board; and
  - (b) after the levy is issued, but no later than the end of the year in respect of which it is issued, such an order is so made designating in relation to that board a date falling not later than the end of that year.
- (4) Sub-paragraph (5) below also applies in a case where a levy is issued in respect of any year by a Welsh National Park planning board under section 74 of the Local Government Finance Act 1988 and—
- (a) that levy is issued by that board at a time after an order has been made under section 63 of this Act by virtue of section 64(1) of this Act designating a date in relation to that board; and
  - (b) the designated date is a date falling after the beginning, but before the end, of that year.
- (5) In a case where this sub-paragraph applies, the levy in question or any levy substituted for that levy—
- (a) shall have effect or, as the case may be, continue to have effect; and
  - (b) in particular, but without prejudice to the generality of paragraph (a) above, shall be paid or, as the case may be, continue to be paid,

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as if the body corporate constituted as that board was not to, or had not, so become the National Park authority for the National Park in question (but was to continue, or had continued, to be the National Park planning board for that Park for the whole of that year).

(6) Where a body corporate constituted as a Welsh National Park planning board has or is to become the National Park authority for the National Park in question by virtue of an order made under section 63 of this Act by virtue of section 64(1) of this Act, nothing in this paragraph authorises that body corporate to issue for any year both a levy under section 74 of the Local Government Finance Act 1988 and a levy by virtue of section 71 of this Act.

(7) In this paragraph—

“the designated date” has the same meaning as in section 64 of this Act;

“National Park planning board” has the meaning given by section 64(9) of this Act;

“Welsh National Park planning board” means a National Park planning board for the area of a National Park in Wales;

“year” means a period of 12 months beginning with 1st April;

and any reference to the issue of a levy under section 74 of the Local Government Finance Act 1988 by a Welsh National Park planning board is a reference to the issue of a levy under that section by such a board by virtue of subsection (7) of that section.

#### Marginal Citations

**M14** 1988 c. 41.

**M15** 1988 c. 41.

#### *The Environmental Protection Act 1990*

16 (1) Subject to sub-paragraph (2) below, if, at the transfer date, the content of the strategy required by section 44A of the <sup>M16</sup>Environmental Protection Act 1990 has not been finally determined, any plan or modification under section 50 of that Act, in its application to England and Wales, whose content has been finally determined before that date shall continue in force until the contents of the strategy are finally determined, notwithstanding the repeal by this Act of that section.

(2) If the strategy required by section 44A of that Act consists, or is to consist, of more than one statement, sub-paragraph (1) above shall apply as if—

(a) references to the strategy were references to any such statement; and

(b) references to a plan or modification under section 50 of that Act were references to such plans or modifications as relate to the area covered, or to be covered, by that statement.

#### Marginal Citations

**M16** 1990 c. 43.

17 If, at the transfer date, the content of the strategy required by section 44B of that Act has not been finally determined, any plan or modification under section 50 of



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that Act, in its application to Scotland, whose content has been finally determined before that date shall continue in force until the contents of the strategy are finally determined, notwithstanding the repeal by this Act of that section.

- 18 (1) This paragraph applies to—
- (a) any resolution of a waste regulation authority under section 54 of that Act (special provision for land occupied by disposal authorities in Scotland);
  - (b) any resolution of a waste disposal authority having effect by virtue of subsection (16) of that section as if it were a resolution of a waste regulation authority under that section,
- which is in force on the transfer date.
- (2) A resolution to which this paragraph applies shall continue in force—
- (a) where no application is made under section 36(1) of that Act for a waste management licence in respect of the site or mobile plant covered by the resolution, until the end of the period of 6 months commencing with the transfer date;
  - (b) where an application as mentioned in sub-paragraph (a) above is made, until—
    - (i) the application is withdrawn;
    - (ii) the application is rejected and no appeal against the rejection is timeously lodged under section 43 of that Act;
    - (iii) any appeal against a rejection of the application is withdrawn or rejected; or
    - (iv) the application is granted.
- (3) In relation to a resolution continued in force by sub-paragraph (2) above, the said section 54 shall have effect subject to the amendments set out in the following provisions of this paragraph.
- (4) In subsection (2), for paragraph (b) there shall be substituted—
- “(b) specified in a resolution passed by a waste regulation authority, or by a waste disposal authority under Part I of the <sup>M17</sup>Control of Pollution Act 1974, before the transfer date within the meaning of section 56(1) of the Environment Act 1995”.
- (5) In subsection (3) for paragraph (b) there shall be substituted—
- “(b) by another person, that it is on land which is the subject of a resolution, that it is with the consent of the waste disposal authority and that any conditions to which such consent is subject are within the terms of the resolution.”
- (6) Subsections (4) to (7) shall cease to have effect.
- (7) For subsections (8) and (9) there shall be substituted—
- “(8) Subject to subsection (9) below, a resolution continued in force by paragraph 18 of Schedule 23 to the Environment Act 1995 may be varied or rescinded by SEPA by a resolution passed by it.
- (9) Before passing a resolution under subsection (8) above varying a resolution, SEPA shall—
- (a) prepare a statement of the variation which it proposes to make;

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- (b) refer that statement to the Health and Safety Executive and to the waste disposal authority in whose area the site is situated or, as the case may be, which is operating the plant; and
  - (c) consider any representations about the variation which the Health and Safety Executive or the waste disposal authority makes to it during the allowed period.
- (9A) The period allowed to the Health and Safety Executive and the waste disposal authority for the making of representations under subsection (9)(c) above is the period of 28 days beginning with that on which the statement is received by that body, or such longer period as SEPA and that body agree in writing.
- (9B) SEPA may—
- (a) postpone the reference under subsection (9)(b) above so far as it considers that by reason of an emergency it is appropriate to do so;
  - (b) disregard the Health and Safety Executive in relation to a resolution which in SEPA’s opinion will not affect the Health and Safety Executive.”
- (8) In subsection (10)—
- (a) for the words “the authority which passed the resolution” and “the waste regulation authority” there shall be substituted the words “SEPA”;
  - (b) the words “the waste disposal authority to discontinue the activities and of” shall cease to have effect.
- (9) Subsections (11) to (15) shall cease to have effect.

**Marginal Citations**

M17 1974 c. 40.

*The Water Industry Act 1991*

- 19 (1) Where, before the coming into force of the repeal by this Act of section 151 of the <sup>M18</sup>Water Industry Act 1991 (financial contributions to rural services), the Secretary of State has received an application from a relevant undertaker for a contribution under that section, he may, notwithstanding the coming into force of that repeal—
- (a) give any such undertaking for any contribution sought by that application as he could have given under that section prior to the coming into force of that repeal;
  - (b) make any payments provided for in an undertaking given by virtue of this sub-paragraph.
- (2) Notwithstanding the coming into force of the repeal by this Act of that section—
- (a) the Secretary of State may make any payments provided for in an undertaking given by him under that section prior to the coming into force of that repeal;
  - (b) subsection (4) of that section (withholding and reduction of contributions) shall—

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- (i) continue to have effect in relation to contributions which the Secretary of State, before that repeal of that section, gave an undertaking under that section to make; and
- (ii) have effect in relation to contributions which the Secretary of State has, by virtue of sub-paragraph (1) above, undertaken to make.

**Marginal Citations**

**M18** 1991 c. 56.

*The Water Resources Act 1991*

- 20 Notwithstanding any provision restricting the power of the Agency to grant a licence under Chapter II of Part II of the <sup>M19</sup>Water Resources Act 1991 (abstracting or impounding of water), or the power of the Secretary of State to direct the Agency to grant such a licence, the Agency may grant, and the Secretary of State may direct it to grant, such licences as are necessary to ensure that water may continue to be abstracted or impounded by or on behalf of the Crown in the manner in which, and to the extent to which,—
- (a) it may be so abstracted or impounded immediately before the coming into force of sub-paragraph (4) of paragraph 2 of Schedule 21 to this Act in relation to that Chapter, or
  - (b) it has been so abstracted or impounded at any time in the period of five years immediately preceding the coming into force of that sub-paragraph in relation to that Chapter.

**Marginal Citations**

**M19** 1991 c. 57.

- 21 (1) This paragraph applies to any consent—
- (a) which was given under paragraph 2 of Schedule 10 to the <sup>M20</sup>Water Resources Act 1991 (discharge consents), as in force before the transfer date; and
  - (b) which is in force immediately before that date.
- (2) On and after the transfer date, a consent to which this paragraph applies—
- (a) shall, for so long as it would have continued in force apart from this Act, have effect as a consent given under paragraph 3 of Schedule 10 to that Act, as substituted by this Act, subject to the same conditions as were attached to the consent immediately before the transfer date; and
  - (b) shall—
    - (i) during the period of six months beginning with the transfer date, not be limited to discharges by any particular person but extend to discharges made by any person; and
    - (ii) after that period, extend, but be limited, to discharges made by any person who before the end of that period gives notice to the Agency that he proposes to rely on the consent after that period.

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**Marginal Citations**

**M20** [1991 c. 57](#).

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