



Control of Pollution Act 1974

1974 CHAPTER 40

PART II

POLLUTION OF WATER

Control of entry of polluting matter and effluents into water

[^{F1}31] Control of pollution of rivers and coastal waters etc.

^{F2}(1)

^{F2}(2)

^{F2}(3)

(4) Where it appears to the Secretary of State that, with a view to preventing poisonous, noxious or polluting matter from entering any controlled waters, it is appropriate to prohibit or restrict the carrying on in a particular area of activities which he considers are likely to result in pollution of the waters, then, subject to subsection (5) below, he may by regulations—

- (a) designate the area; and
- (b) provide that prescribed activities shall not be carried on at any place within the area except with the consent (which shall not be unreasonably withheld) of [^{F3}SEPA] and in accordance with any reasonable conditions to which the consent is subject;
- (c) provide that a contravention of the regulations shall be an offence and prescribe the maximum penalty for the offence; and
- (d) make provision for the imposition by [^{F4}SEPA] of charges in respect of the consent mentioned in paragraph (b) above.

(5) It shall be the duty of the Secretary of State, before he makes any regulations under subsection (4) above—

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- (a) to publish in the Edinburgh Gazette and in at least one newspaper circulating in the area in question a copy of the proposed regulations and a notice specifying—
- (i) a period of not less than twenty-eight days, beginning with the date on which the notice is first published, within which objections to the proposed regulations may be made, and
 - (ii) the person to whom such objections may be made; and
- (b) to consider any objections to the proposed regulations which are made within that period and, if such an objection is so made by a prescribed person and is not withdrawn, to cause a local inquiry to be held in pursuance of section 96 of this Act with respect to the proposed regulations;

and the Secretary of State may, after considering any such objections as are mentioned in paragraph (b) of this subsection and the report of any person appointed to hold a local inquiry with respect to the proposed regulations, make the regulations either in the form in which a copy of them was published in pursuance of this subsection or in that form with such modifications as he considers appropriate.

- (6) [^{F5}SEPA] may by byelaws make such provision as [^{F6}it] considers appropriate for prohibiting or regulating the washing or cleaning, in any controlled waters. . . ^{F7}, of things of a kind specified in the byelaws; and a person who contravenes any byelaws made by virtue of this subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale or such smaller sum as is specified in the byelaws.

^{F2}(7)

- (8) The maximum penalty prescribed in pursuance of subsection (4) of this section shall not exceed the penalties specified in [^{F8}section 30F(6) above].

- (9) In subsection (4) of this section, the reference to the entry of poisonous, noxious or polluting matter into controlled waters shall not include a reference to the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use of any land for agricultural purposes.

^{F2}(10)

Textual Amendments

- F1** Ss. 31, 32 and 34-42 repealed (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 41\(1\), 57\(6\), 58](#), [Sch. 27 Pt. I](#) and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), [Sch. 23 para. 4](#), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 41\(1\), 57\(6\)](#), [58](#)
- F2** [S. 31\(1\)-\(3\), \(7\) and \(10\)](#) repealed (1.4.1996) by [1995 c. 25, ss. 106, 120\(3\)](#), [Sch. 16 para. 3](#), [Sch. 24](#) (with ss. 7(6), 115, 117); [S.I. 1996/186, art. 3](#)
- F3** Words in [s. 31\(4\)\(b\)](#) substituted (1.4.1996) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 29\(6\)\(a\)](#) (with ss. 7(6), 115, 117); [S.I. 1996/186, art. 3](#)
- F4** Words in [s. 31\(4\)\(d\)](#) substituted (1.4.1996) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 29\(2\)](#) (with ss. 7(6), 115, 117); [S.I. 1996/186, art. 3](#)
- F5** Words in [s. 31\(6\)](#) substituted (1.4.1996) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 29\(2\)](#) (with ss. 7(6), 115, 117); [S.I. 1996/186, art. 3](#)
- F6** Words in [s. 31\(6\)](#) substituted (1.4.1996) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 29\(6\)\(b\)\(i\)](#) (with ss. 7(6), 115, 117); [S.I. 1996/186, art. 3](#)

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- F7** Words in s. 31(6) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(6)(b)(ii), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F8** Words in s. 31(8) substituted (1.4.1996) by 1995 c. 25, s. 106, **Sch. 16 para. 4** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

- C1** S. 31 modified by **Channel Tunnel Act 1987 (c. 53, SIF 102)**, ss. 6, 45, Sch. 2 para. 14(3), **Sch. 7 Pt. VI para. 2**
- C2** S. 31(4)-(5)(8)-(10) extended (S.)(2.12.1991) by S.I. 1991/2539, reg. 3, **Sch.**
S. 31(4)-(5)(8)-(10) amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 12 Pt. II para. 16** (with ss. 42, 46)
- C3** S. 31 applied (with modifications) (24.3.1994) by 1994 c. i, s. 1, **Sch. Pt. II para. 12(4)**
s. 31 applied (with modifications) (24.3.1994) by 1994 c. ii, s. 1, **Sch. Pt. II para. 10(4)**
s. 31 applied (with modifications) (24.3.1994) by 1994 c. iii, s. 1, **Sch. Pt. II para. 11(4)**
- C4** S. 31(9) extended by S.I. 1985/708, reg. 4(1), **Sch. 1**

[^{F9}31A Requirements to take precautions against pollution.

- (1) The Secretary of State may by regulations make provision—
- for prohibiting a person from having custody or control of any poisonous, noxious or polluting matter unless prescribed works and prescribed precautions and other steps have been carried out or taken for the purpose of preventing the matter from entering controlled waters;
 - for requiring a person who already has custody or control of, or makes use of, any such matter to carry out such works for that purpose and to take such precautions and other steps for that purpose as may be prescribed.
- (2) Without prejudice to the generality of the power conferred by subsection (1) above, regulations under that subsection may—
- confer power on [^{F10}SEPA]—
 - to determine for the purposes of the regulations the circumstances in which a person is required to carry out works or take any precautions or other steps; and
 - by notice to that person, to impose the requirement and to specify or describe the works, precautions or other steps which that person is required to carry out or take;
 - provide for appeals to the Secretary of State against notices served by [^{F10}SEPA] in pursuance of provision made by virtue of paragraph (a) above; and
 - provide that a contravention of the regulations shall be an offence the penalty for which shall be—
 - on summary conviction, imprisonment for a term not exceeding three months or to a fine not exceeding [^{F11}£20,000] or to both;
 - on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.

Textual Amendments

- F9** Ss. 31, 32 and 34-42 repealed (E.W.) by **Water Act 1989 (c. 15, SIF 130)**, ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by **Water Act 1989 (c. 15,**

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SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58

F10 Words in s. 31A(2)(a)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F11 Word substituted by Environmental Protection Act 1990 (c. 43, SIF 46:4), **s. 145(2)**

Modifications etc. (not altering text)

C5 S. 31A extended (2.12.1991) by S.I. 1991/2539, reg. 3, **Sch.**

S. 31A amended (27.8.1993) by 1993 c. 12, ss. 40, 51(3), **Sch. 3 Pt. II para. 16** (with ss. 42, 46)

C6 S. 31A(2)(b): power to delegate functions conferred (1.4.1996) by 1995 c. 25, **s. 114(2)(a)(i)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[^{F12}31B Nitrate sensitive areas.

- (1) Where the Secretary of State considers that it is appropriate to do so with a view to achieving the following purpose, that is to say, preventing or controlling the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use of any land for agricultural purposes, he may by order designate that land, together with any other land to which he considers it appropriate to apply the designation, as a nitrate sensitive area.
- (2) Where any area has been designated as a nitrate sensitive area by an order under this section and the Secretary of State considers that it is appropriate to do so with a view to achieving the purpose mentioned in subsection (1) above, he may, subject to such restrictions (if any) as may be set out in the order, enter into an agreement under which, in consideration of payments to be made by him—
 - (a) [^{F13}the absolute owner (within the meaning of section 93 of the Agricultural Holdings (Scotland) Act 1949)] of any agricultural land in that area; or
 - (b) where any such owner has given his written consent to the agreement being entered into by any person having another interest in that land, that other person,
 accepts such obligations with respect to the management of that land or otherwise as may be imposed by the agreement.
- (3) Where it appears to the Secretary of State in relation to any area which is, or is to be, designated by an order under this section as a nitrate sensitive area that it is appropriate for provision for the imposition of requirements, prohibitions or restrictions to be contained in an order under this section (as well as for him to be able to enter into such agreements as are mentioned in subsection (2) above), he may, by a subsequent order under this section or, as the case may be, by the order designating that area—
 - (a) with a view to achieving the purpose mentioned in subsection (1) above, require, prohibit or restrict the carrying on on or in relation to any agricultural land in that area of such activities as may be specified or described in the order; and
 - (b) provide for such amounts (if any) as may be specified in or determined under the order to be paid by the Secretary of State, to such persons as may be so specified or determined, in respect of the obligations imposed in relation to that area on those persons by virtue of paragraph (a) above.
- (4) Without prejudice to the generality of subsection (3) above, provision contained in an order under this section by virtue of that subsection may—

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- (a) confer power upon the Secretary of State to determine for the purposes of the order the circumstances in which the carrying on of any activities is required, prohibited or restricted and to determine the activities to which any such requirement, prohibition or restriction applies;
 - (b) provide for any requirement to carry on any activity not to apply in cases where the Secretary of State has consented to a failure to carry on that activity and any conditions on which the consent has been given are complied with;
 - (c) apply a prohibition or restriction in respect of any activities to cases where the activities are carried on without the consent of the Secretary of State or in contravention of any conditions subject to which any such consent is given;
 - (d) provide that a contravention of a requirement, prohibition or restriction contained in the order or in a condition of a consent given in relation to or for the purposes of any such requirement, prohibition or restriction shall be an offence the maximum penalties for which shall not exceed the maximum penalties specified in ^{F14}subsection (6) of section 30F above];
 - (e) provide for amounts paid in pursuance of any provision contained in the order to be repaid at such times and in such circumstances and with such interest as may be specified in or determined under the order;
 - (f) provide (subject to any regulations under subsection (6) below) for anything falling to be determined under the order by any person to be determined in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be specified in the order.
- (5) The Secretary of State shall not make an order under this section except in accordance with any applicable provisions of Schedule 1A to this Act.
- (6) The Secretary of State may, for the purposes of any orders under this section which require his consent to the carrying on of any activities or to any failure to carry on any activity, by regulations make provision with respect to—
- (a) applications for any such consent;
 - (b) the conditions of any such consent;
 - (c) the revocation or variation of any such consent;
 - (d) the reference to arbitration of disputes about determinations on any such application;
 - (e) the imposition of charges where such an application has been made, such a consent has been given or there has been any act or omission in pursuance of any such consent; and
 - (f) the registration of any such application or consent.

Textual Amendments

- F12** Ss. 31, 32 and 34-42 repealed (E.W.) by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), [Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 41\(1\), 57\(6\), 58](#), [Sch. 27 Pt. I](#) and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by [Water Act 1989 \(c. 15, SIF 130\)](#), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), [Sch. 23 para. 4, Sch. 26 paras. 3\(1\)\(2\), 17, 40\(4\), 41\(1\), 57\(6\)](#), [58](#)
- F13** S. 31B: by [Agricultural Holdings \(Scotland\) Act 1991 \(c. 55\)](#), ss. 88(1), 89(2), [Sch. 11 para. 39](#) (with [s. 45\(3\)](#)), it is provided that in s. 31(B)(2)(a), for the words "an absolute owner (within the meaning of section 93 of the Agricultural Holdings (Scotland) Act 1949)" there shall be substituted (25.9.1991) "the owner of the dominium utile".

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F14 Words in s. 31B(4)(d) substituted (1.4.1996) by 1995 c. 25, s. 106, **Sch. 16 para. 5** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[^{F15}31C Registering of agreement.

- (1) An agreement under subsection (2) of section 31B above may—
 - (a) where the land is registered in the Land Register of Scotland, be registered in that register;
 - (b) in any other case, be recorded in the appropriate Division of the General Register of Sasines.
- (2) An agreement registered or recorded under subsection (1) above shall be enforceable at the instance of the Secretary of State against persons deriving title to the land (including any person acquiring right to a tenancy by assignation or succession) from the person who entered into the agreement; provided that such an agreement shall not be enforceable against a third party who shall have in good faith and for value acquired right (whether completed by infetment or not) to the land prior to the agreement being registered or recorded as aforesaid, or against any person deriving title from such third party.
- (3) Notwithstanding the terms of any agreement registered or recorded under subsection (1) above, the parties to the agreement or any persons deriving title from them may at any time agree to terminate it; and such an agreement to terminate it shall be registered or recorded in the same manner as was the original agreement.]

Textual Amendments

F15 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

[^{F16}31D

Textual Amendments

F16 S. 31D repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(7), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[^{F17}32

Textual Amendments

F17 S. 32 repealed (1.4.1996) by 1995 c. 25, ss. 106, 120(3), Sch. 16 para. 3, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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[^{F18}33] Control of sanitary appliances on vessels.

- (1) [^{F19}SEPA]] may by byelaws make such provision as it considers appropriate for prohibiting or regulating the keeping or use, on any controlled waters ^{F20} . . . [^{F21} , of vessels of a kind specified in the byelaws which are provided with sanitary appliances; and a person who contravenes any byelaw made by virtue of this section shall be guilty of an offence.
- (2) The Secretary of State may by order provide that any byelaws specified in the order which were made by virtue of section 25(1)(c) of the Rivers (Prevention of Pollution) (Scotland) Act 1951 (byelaws) shall have effect, with such modifications (if any) as are so specified, as if made by virtue of the preceding subsection.
- (3) In this section “sanitary appliance” means a water closet or other prescribed appliance (except a sink, bath and a shower-bath) which is designed to permit polluting matter to pass into the water on which the vessel in question is for the time being situated.
- (4) A person guilty of an offence by virtue of any of the preceding provisions of this section shall be liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale or such smaller sum as may be specified in the byelaws.]

Textual Amendments

- F18** S. 33 substituted (S.) (31.5.1991) by 1989 c. 15, ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**
- F19** Words in s. 33(1) substituted (S.) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(1)(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F20** Words in s. 33(1) repealed (S.) (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(8)(b), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F21** Word in s. 33(1) substituted (S.) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(8)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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