



# Water Resources Act 1991

## 1991 CHAPTER 57

An Act to consolidate enactments relating to the National Rivers Authority and the matters in relation to which it exercises functions, with amendments to give effect to recommendations of the Law Commission. [25th July 1991]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### Modifications etc. (not altering text)

- C1 Act: definition applied (1.12.1991) by [Water Industry Act 1991 \(c. 56, SIF 130\)](#), [s. 219\(1\)](#)
- C2 Act: definition applied (1.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), [s. 72\(1\)](#)
- C3 Act applied (16.3.1992) by [Avon Weir Act 1992 \(c. v\)](#), [s. 12\(1\)](#)  
Act excluded (28.7.1995) by [1995 c. 25, s. 7\(6\)](#) (with ss. 115, 117); S.I. 1995/1983, [art. 2](#)  
Act modified (1.4.1996) by [1995 c. 25, s. 14\(2\)\(b\)](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)  
Act applied (18.12.1996) by [1996 c. 61, s. 2, Sch. 2 para. 9\(8\)\(c\)](#)  
Act amended (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 128](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)
- C4 Act: transfer of certain functions (1.7.1999) by [1999/672, art. 2, Sch. 1](#)
- C5 Act applied (with modifications) (24.3.2005) by [New Forest National Park Authority \(Establishment\) Order 2005 \(S.I. 2005/421\)](#), [Sch. 3 para. 5\(2\)](#)
- C6 Act applied (24.3.2010) by [The South Downs National Park Authority \(Establishment\) Order 2010 \(S.I. 2010/497\)](#), [Sch. 3 para. 4\(2\)](#)
- C7 Act: power to amend conferred (1.10.2010) by [Flood and Water Management Act 2010 \(c. 29\)](#), [ss. 28, 49\(3\)](#) (with [s. 49\(1\)\(6\)](#)); S.I. 2010/2169, [art. 4, Sch.](#)
- C8 Act: power to apply conferred (18.1.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), [s. 39\(12\)-\(14\)](#), [49\(3\)](#) (with [s. 49\(1\)\(6\)](#)); S.I. 2011/95, [art. 2\(c\)](#)
- C9 Act: power to apply conferred (18.1.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), [s. 38\(8\)-\(10\)](#), [49\(3\)](#) (with [s. 49\(1\)\(6\)](#)); S.I. 2011/95, [art. 2\(b\)](#)
- C10 Act applied (with modifications) (1.7.2015) by [The National Park Authorities \(England\) Order 2015 \(S.I. 2015/770\)](#), [Sch. 3 para. 5\(2\)](#)

*Status: Point in time view as at 17/09/2018.*

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**Commencement Information**

**II** Act wholly in force at 1.12.1991 see [s. 225\(2\)](#).

**PART I**

**PRELIMINARY**

**CHAPTER I**

**THE NATIONAL RIVERS AUTHORITY**

**F1** .....

**Textual Amendments**

**F1** [Ss. 1-14](#) repealed (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 129, Sch. 24](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186, art. 3](#)

**F2** .....

**Textual Amendments**

**F2** [Ss. 1-14](#) repealed (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 129, Sch. 24](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186, art. 3](#)

**F3** .....

**Textual Amendments**

**F3** [Ss. 1-14](#) repealed (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 129, Sch. 24](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186, art. 3](#)

**F4** .....

**Textual Amendments**

**F4** [Ss. 1-14](#) repealed (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 129, Sch. 24](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186, art. 3](#)

**F5** .....

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**Textual Amendments**

**F5** Ss. 1-14 repealed (1.4.1996) by 1996 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**CHAPTER II**

**COMMITTEES WITH FUNCTIONS IN RELATION TO THE AUTHORITY**

*Advisory committees*

**F6** .....

**Textual Amendments**

**F6** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F7** .....

**Textual Amendments**

**F7** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F8** .....

**Textual Amendments**

**F8** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

*Flood defence committees*

**F9** .....

**Textual Amendments**

**F9** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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F10<sup>10</sup> .....

.....

**Textual Amendments**

**F10** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F11<sup>11</sup> .....

.....

**Textual Amendments**

**F11** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F12<sup>12</sup> .....

.....

**Textual Amendments**

**F12** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F13<sup>13</sup> .....

.....

**Textual Amendments**

**F13** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F14<sup>14</sup> .....

.....

**Textual Amendments**

**F14** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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## CHAPTER III

### GENERAL DUTIES

#### 15 General duties with respect to the water industry.

- (1) It shall be the duty of the Agency [<sup>F15</sup>and the NRBW], in exercising any of [<sup>F16</sup>their] powers under any enactment, to have particular regard to the duties imposed, by virtue of the provisions of Parts II to IV of the <sup>M1</sup>Water Industry Act 1991, on any water undertaker or sewerage undertaker which appears to the Agency [<sup>F17</sup>or the NRBW, as the case may be,] to be or to be likely to be affected by the exercise of the power in question.
- (2) It shall be the duty of each of the Ministers, in exercising—
- (a) any power conferred by virtue of [<sup>F18</sup>the 1995 Act,]this Act, the <sup>M2</sup>Land Drainage Act 1991, the Water Industry Act 1991 [<sup>F19</sup>, the Water Act 1989 or the Natural Resources Body for Wales (Establishment) Order 2012 (S.I.2012/1903)] in relation to, or to decisions of, the Agency [<sup>F20</sup>or the NRBW]; or
  - (b) any power which, but for any direction given by one of the Ministers, would fall to be exercised by the Agency [<sup>F20</sup>or the NRBW],
- to take into account the duty imposed on the Agency [<sup>F21</sup>and the NRBW] by subsection (1) above.

#### Textual Amendments

- F15** Words in s. 15(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 265(2)(a)** (with Sch. 7)
- F16** Word in s. 15(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 265(2)(b)** (with Sch. 7)
- F17** Words in s. 15(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 265(2)(c)** (with Sch. 7)
- F18** Words in s. 15(2)(a) substituted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 130** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F19** Words in s. 15(2)(a) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 265(3)(a)** (with Sch. 7)
- F20** Words in s. 15(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 265(3)(b)** (with Sch. 7)
- F21** Words in s. 15(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 265(3)(c)** (with Sch. 7)

#### Marginal Citations

- M1** 1991 c. 56.  
**M2** 1991 c. 59.

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**Textual Amendments**

**F22** Ss. 16-19 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 131, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

<sup>F23</sup> **17** .....

**Textual Amendments**

**F23** Ss. 16-19 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 131, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

<sup>F24</sup> **18** .....

**Textual Amendments**

**F24** Ss. 16-19 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 131, Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**PART II**

WATER RESOURCES MANAGEMENT

**Modifications etc. (not altering text)**

**C11** Pt. II: transfer of functions to the Environment Agency (1.4.1996) by 1995 c. 25, s. 2(1)(a)(i) (with ss. 115, 117); S.I. 1996/186, **art. 3**

**CHAPTER I**

GENERAL MANAGEMENT FUNCTIONS

**19** **General management of resources by the [<sup>F25</sup>Agency.]**

- (1) It shall be the duty of the [<sup>F26</sup>Agency] to take all such action as it may from time to time consider, in accordance (if any have been given for the purposes of this section) with the directions of the Secretary of State, to be necessary or expedient for the purpose—
  - (a) of conserving, redistributing or otherwise augmenting water resources in England and Wales; and
  - (b) of securing the proper use of water resources in England and Wales.
- (2) Nothing in this section shall be construed as relieving any water undertaker of the obligation to develop water resources for the purpose of performing any duty imposed on it by virtue of section 37 of the <sup>M3</sup>Water Industry Act 1991 (general duty to maintain water supply system).

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### Textual Amendments

- F25** Words in s. 19 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F26** Words in s. 19 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### Marginal Citations

- M3** 1991 c. 56.

## 20 Water resources management schemes.

- (1) It shall be the duty of the [<sup>F27</sup>appropriate agency] so far as reasonably practicable to enter into and maintain such arrangements with water undertakers for securing the proper management or operation of—
- the waters which are available to be used by water undertakers for the purposes of, or in connection with, the carrying out of their functions; and
  - any reservoirs, apparatus or other works which belong to, are operated by or are otherwise under the control of water undertakers for the purposes of, or in connection with, the carrying out of their functions,
- as the [<sup>F27</sup>appropriate agency] from time to time considers appropriate for the purpose of carrying out its functions under section 6(2) [<sup>F28</sup>or, as the case may be, section 6(2A)] of the 1995 Act.
- (2) Without prejudice to the power of the [<sup>F27</sup>appropriate agency] and any water undertaker to include any such provision as may be agreed between them in arrangements under this section, such arrangements may—
- make provision by virtue of subsection (1)(a) above with respect to the construction or installation of any reservoirs, apparatus or other works which will be used by the undertaker in the carrying out of its functions;
  - contain provision requiring payments to be made by the [<sup>F27</sup>appropriate agency] to the undertaker; and
  - require the reference to and determination by the Secretary of State or the [<sup>F29</sup>Water Services Regulation Authority ] of questions arising under the arrangements.
- (3) The [<sup>F27</sup>appropriate agency] shall send a copy of any arrangements entered into by it under this section to the Secretary of State; and the obligations of a water undertaker by virtue of any such arrangements shall be enforceable under section 18 of the <sup>M4</sup>Water Industry Act 1991 (enforcement orders) by the Secretary of State.

### Textual Amendments

- F27** Words in s. 20 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 266(2)** (with Sch. 7)
- F28** Words in s. 20(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 266(3)** (with Sch. 7)
- F29** Words in s. 20(2)(c) substituted (1.4.2006) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(2)**; S.I. 2005/2714, art. 4(f) (with Sch. para. 8)

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### Marginal Citations

M4 1991 c. 56

## [<sup>F30</sup>20A Water resources management schemes: other abstractors

- (1) The [<sup>F31</sup>appropriate agency] may enter into and maintain such arrangements with holders of abstraction licences other than water undertakers for securing the proper management or operation of—
- (a) the waters from which they have the right by virtue of their licences to abstract water; and
  - (b) any reservoirs, apparatus or other works which are used for the purposes of or in connection with their abstractions and which belong to them, are operated by them or are otherwise under their control,
- as the [<sup>F31</sup>appropriate agency] from time to time considers appropriate for the purpose of carrying out its functions under section 6(2) [<sup>F32</sup>or, as the case may be, section 6(2A)] of the 1995 Act.
- (2) Without prejudice to the power of the [<sup>F31</sup>appropriate agency] and any holder of an abstraction licence to include any such provision as may be agreed between them in arrangements under this section, such arrangements may—
- (a) make provision by virtue of subsection (1)(a) above with respect to the construction or installation of any reservoirs, apparatus or other works which the holder of the licence will use for the purposes of or in connection with his abstraction;
  - (b) contain provision requiring payments to be made by the [<sup>F31</sup>appropriate agency] to the holder of the licence; and
  - (c) require the reference to and determination by the Secretary of State or the Water Services Regulation Authority of questions arising under the arrangements.
- (3) The [<sup>F31</sup>appropriate agency] shall send a copy of any arrangements entered into by it under this section to the Secretary of State.
- (4) In this section, references to abstraction licences are to licences under Chapter 2 of this Part to abstract water.]

### Textual Amendments

- F30** S. 20A inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 28**, 105(3); [S.I. 2004/2528](#), art. 2(b) (with [Sch. para. 8](#))
- F31** Words in s. 20A substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 266(2)** (with [Sch. 7](#))
- F32** Words in s. 20A(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 266(3)** (with [Sch. 7](#))

## [<sup>F33</sup>20B Water resources management schemes: referral to Secretary of State

- (1) This section applies where—
- (a) the [<sup>F34</sup>appropriate agency] has sought to enter into arrangements acceptable to it under section 20 or 20A above, but is satisfied that the other party is



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- unwilling to enter into such arrangements or to do so on terms appearing to the [F34 appropriate agency] to be reasonable; or
- (b) having entered into such arrangements, the [F34 appropriate agency] has sought to renew or vary them but is satisfied that the other party is unwilling to do so or to do so on terms appearing to the [F34 appropriate agency] to be reasonable.
- (2) Where this section applies, the [F34 appropriate agency] may refer to the Secretary of State the question (as the case may be)—
- (a) whether such arrangements should be entered into, and if so, on what terms; or
- (b) whether the arrangements should be renewed or varied (as the case may be), and if so, on what terms.
- (3) If the Secretary of State determines that arrangements should be entered into or (as the case may be) renewed or varied, such arrangements on the terms determined by the Secretary of State shall be enforceable—
- (a) by civil proceedings by the Secretary of State for an injunction or for any other appropriate relief; and
- (b) where the other party is a water undertaker, also under section 18 of the Water Industry Act 1991 (enforcement orders) by the Secretary of State.
- (4) The functions of the Secretary of State under subsection (2) above shall be treated for the purposes of section 114 of the 1995 Act (delegation or reference of appeals) as if they were functions to which paragraph (a) of subsection (1) of that section applied.]

#### Textual Amendments

**F33** S. 20B inserted (1.10.2004) by [Water Act 2003 \(c. 37\), ss. 29\(1\), 105\(3\)](#); [S.I. 2004/2528, art. 2\(b\)](#) (with [Sch. para. 8](#))

**F34** Words in s. 20B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 267](#) (with [Sch. 7](#))

#### [F35] 20C Proposals for bulk supply arrangements

- (1) In the circumstances mentioned in subsection (2) below, the [F36 appropriate agency] may, in carrying out its functions under section 6(2) [F37 or, as the case may be, section 6(2A)] of the 1995 Act, propose to a qualifying person (within the meaning of section 40 of the Water Industry Act 1991) that he make an application under that section for a bulk supply of water from a water undertaker.
- (2) The circumstances referred to in subsection (1) above are that it appears to the [F36 appropriate agency] that such a bulk supply is necessary in order to secure the proper use of water resources.
- (3) The [F36 appropriate agency] shall not make such a proposal without first consulting the Water Services Regulation Authority.
- (4) The [F36 appropriate agency] may include in its proposal the period for which, and terms and conditions on which, the [F36 appropriate agency] considers it appropriate that the bulk supply should be given.]

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### Textual Amendments

- F35** S. 20C inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 31(1)**, 105(3); S.I. 2004/2528, art. 2(c) (with [Sch. para. 8](#))
- F36** Words in s. 20C substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 268(2)** (with [Sch. 7](#))
- F37** Words in s. 20C(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 268(3)** (with [Sch. 7](#))

## 21 Minimum acceptable flows.

- (1) The [<sup>F38</sup>appropriate agency] may, if it thinks it appropriate to do so, submit a draft statement to the Secretary of State containing, in relation to any inland waters that are not discrete waters—
- (a) provision for determining the minimum acceptable flow for those waters; or
  - (b) where any provision for determining such a flow is for the time being in force in relation to those waters, provision for amending that provision or for replacing it with different provision for determining the minimum acceptable flow for those waters.
- (2) The provision contained in any statement for determining the minimum acceptable flow for any inland waters shall, in relation to the inland waters to which it relates, set out—
- (a) the control points at which the flow in the waters is to be measured;
  - (b) the method of measurement which is to be used at each control point; and
  - (c) the flow which is to be the minimum acceptable flow at each control point or, where appropriate, the flows which are to be the minimum acceptable flows at each such point for the different times or periods specified in the statement.
- (3) Before preparing so much of any draft statement under this section as relates to any particular inland waters, the [<sup>F38</sup>appropriate agency] shall consult—
- [<sup>F39</sup>(za) if those waters are in Wales and there are related inland waters in England, the Agency;
  - (zb) if those waters are in England and there are related inland waters in Wales, the NRBW;]
  - (a) any water undertaker having the right to abstract water from those waters;
  - (b) any other water undertaker having the right to abstract water from any related underground strata;
  - (c) the drainage board for any internal drainage district from which water is discharged into those waters or in which any part of those waters is situated;
  - (d) any navigation authority, harbour authority or conservancy authority having functions in relation to those waters or any related inland waters;
  - (e) if those waters are <sup>F40</sup>... situated in Wales (or in an area of the sea adjoining either the coast of Wales or an area of sea forming part of Wales) and they or any related inland waters are tidal waters in relation to which there is no such navigation authority, harbour authority or conservancy authority, [<sup>F41</sup>the Secretary of State for Transport]; and
  - (f) any person authorised by a licence under Part I of the <sup>M5</sup>Electricity Act 1989 to generate electricity [<sup>F42</sup>who has a right to abstract water from those waters].

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- (4) In determining the flow to be specified in relation to any inland waters under subsection (2)(c) above, the [<sup>F38</sup>appropriate agency] shall have regard—
    - (a) to the flow of water in the inland waters from time to time;
    - (b) in the light of its duties under [<sup>F43</sup>sections 6(1), 7 and 8 of the 1995 Act], to the character of the inland waters and their surroundings; and
    - (c) to any water quality objectives established under Chapter I of Part III of this Act in relation to the inland waters or any other inland waters which may be affected by the flow in the inland waters in question.
  - (5) The flow specified in relation to any inland waters under subsection (2)(c) above shall be not less than the minimum which, in the opinion of the [<sup>F38</sup>appropriate agency], is needed for safeguarding the public health and for meeting (in respect of both quantity and quality of water)—
    - (a) the requirements of existing lawful uses of the inland waters, whether for agriculture, industry, water supply or other purposes; and
    - (b) the requirements, in relation to both those waters and other inland waters whose flow may be affected by changes in the flow of those waters, of navigation, fisheries or land drainage.
  - (6) The provisions of Schedule 5 to this Act shall have effect with respect to draft statements under this section and with respect to the approval of statements submitted as draft statements.
  - (7) The approval under Schedule 5 to this Act of a draft statement under this section shall bring into force, on the date specified in that approval, so much of that statement, as approved, as contains provision for determining, amending or replacing the minimum acceptable flow for any inland waters.
  - (8) For the purposes of subsection (3) above—
    - (a) underground strata are related underground strata in relation to any inland waters if—
      - (i) a water undertaker has a right to abstract water from the strata; and
      - (ii) it appears to the [<sup>F38</sup>appropriate agency], having regard to the extent to which the level of water in the strata depends on the flow of those waters, that the exercise of that right may be substantially affected by so much of the draft statement in question as relates to those waters;
    - (b) inland waters are related inland waters in relation to any other inland waters, where it appears to the [<sup>F38</sup>appropriate agency] that changes in the flow of the other waters may affect the flow of the first-mentioned inland waters.
  - (9) For the purposes of subsection (5) above the [<sup>F38</sup>appropriate agency] shall be entitled (but shall not be bound) to treat as lawful any existing use of any inland waters unless—
    - (a) by a decision given in any legal proceedings, it has been held to be unlawful; and
    - (b) that decision has not been quashed or reversed;
- <sup>F44</sup> ... .
- <sup>F45</sup>(10) In subsection (5) above, the reference to land drainage includes—
    - (a) defence against water (including sea water), irrigation (other than spray irrigation), warping and the carrying on, for any purpose, of any other practice which involves management of the level of water in a watercourse; and

*Status: Point in time view as at 17/09/2018.*

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(b) the provision of flood warning systems.]

#### Textual Amendments

- F38** Words in s. 21 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 269(2)** (with Sch. 7)
- F39** S. 21(3)(za)(zb) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 269(3)(a)** (with Sch. 7)
- F40** Words in s. 21(3)(e) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 269(3)(b)** (with Sch. 7)
- F41** Words in s. 21(3)(e) substituted (25.11.2002) by [S.I. 2002/2626](#), art. 20, **Sch. 2 para. 18(2)**
- F42** Words in s. 21(3)(f) added (21.9.1995) by [1995 c. 25](#), s. 120(1), **Sch. 22 para. 133(1)** (with ss. 7(6), 115, 117); [S.I. 1995/1983](#), art. 3
- F43** Words in s. 21(4)(b) substituted (1.4.1996) by [1995 c. 25](#), s. 120, **Sch. 22 para. 133(2)** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), art. 3
- F44** Words in s. 21(9) repealed (1.1.2018) by [Water Act 2003 \(c. 37\)](#), ss. 8(2)(a), 105(3), **Sch. 9 Pt. 1**; [S.I. 2017/1043](#), art. 2(c)(h)
- F45** S. 21(10) added (1.1.2018) by [Water Act 2003 \(c. 37\)](#), ss. 8(2)(b), 105(3); [S.I. 2017/1043](#), art. 2(c)

#### Marginal Citations

- M5** [1989 c. 29](#).

## 22 Directions to the <sup>F46</sup>appropriate agency] to consider minimum acceptable flow.

- (1) If the <sup>F46</sup>appropriate agency] is directed by the Secretary of State to consider whether the minimum acceptable flow for any particular inland waters ought to be determined or reviewed, the <sup>F46</sup>appropriate agency] shall consider that matter as soon as reasonably practicable after being directed to do so.
- (2) After considering any matter under subsection (1) above the <sup>F46</sup>appropriate agency] shall submit to the Secretary of State with respect to the inland waters in question either—
  - (a) such a draft statement as is mentioned in subsection (1) of section 21 above; or
  - (b) a draft statement that no minimum acceptable flow ought to be determined for those waters or, as the case may require, that the minimum acceptable flow for those waters does not need to be changed.

and subsections (6) and (7) of that section shall apply in relation to a draft statement under this subsection as they apply in relation to a draft statement under that section.
- (3) Without prejudice to the generality of paragraph 4 of Schedule 5 to this Act, the power of the Secretary of State under that paragraph to alter a draft statement before approving it shall include power to substitute a statement containing or amending any such provision as is mentioned in subsection (2) of section 21 above for such a draft statement as is mentioned in subsection (2)(b) of this section.

#### Textual Amendments

- F46** Words in s. 22 and heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(a)** (with Sch. 7)

*Status: Point in time view as at 17/09/2018.*

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## 23 Minimum acceptable level or volume of inland waters.

- (1) Where it appears to the [<sup>F47</sup>appropriate agency], in the case of any particular inland waters, that it would be appropriate to measure the level or the volume (either instead of or in addition to the flow) the [<sup>F47</sup>appropriate agency] may determine that sections 21 and 22 above shall apply in relation to those inland waters as if any reference to the flow were or, as the case may be, included a reference to the level or to the volume.
- (2) Where the [<sup>F47</sup>appropriate agency] makes a determination under subsection (1) above with respect to any inland waters, any draft statement prepared for the purposes of section 21 or 22 above, in so far as it relates to those waters, shall state—
  - (a) whether the level or the volume is to be measured; and
  - (b) whether it is to be measured instead of, or in addition to, the flow.
- (3) Chapter II of this Part shall apply in relation to any inland waters with respect to which a determination has been made under subsection (1) above as if any reference in that Chapter to the flow were, or (as the case may be) included, a reference to the level or, as the case may be, the volume.

### Textual Amendments

- F47** Words in ss. 23, 24 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(a\)](#) (with Sch. 7)

## CHAPTER II

### ABSTRACTION AND IMPOUNDING

#### Modifications etc. (not altering text)

- C12** Chapter II of Part II excluded (1.4.1996) by [1995 c. 25, s. 6\(3\)](#) (with ss. 7(6), 115, 117); [S.I. 1996/186, art. 3](#)
- C13** Chapter II of Part II modified (18.12.1996) by [1996 c. 61, s. 52, Sch. 15 Pt. III para. 11](#)
- C14** Pt. II Ch. II modified (22.3.2005) by [Midland Metro \(Wednesbury to Brierley Hill and Miscellaneous Amendments\) Order 2005 \(S.I. 2005/927\)](#), [Sch. 11 para. 11](#) (with art. 51)
- C15** Pt. II Ch. II modified (26.8.2005) by [River Tyne \(Tunnels\) Order 2005 \(S.I. 2005/2222\)](#), art. 1, [Sch. 10 para. 14](#) (with arts. 45(1), 48, Sch. 10 paras. 21, 29)
- C16** Pt. II Ch. II modified (19.3.2007) by [Ouseburn Barrage Order 2007 \(S.I. 2007/608\)](#), art. 1, [Sch. 6 para. 18](#) (with arts. 46-48, Sch. 6 paras. 17(5), 23)
- C17** Pt. II Ch. II modified (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), [Sch. 17 para. 11](#)
- C18** Pt. II Ch. II modified (9.6.2009) by [Nottingham Express Transit System Order 2009 \(S.I. 2009/1300\)](#), arts. 1, [71\(12\)](#) (with Sch. 13 para. 14(2), Sch. 14 para. 19, Sch. 16)
- C19** Pt. II Ch. II modified (20.7.2010) by [The Network Rail \(Nuneaton North Chord\) Order 2010 \(S.I. 2010/1721\)](#), art. 1, [Sch. 11 para. 12](#)
- C20** Pt. II Ch. II modified (27.8.2010) by [The Llangollen and Corwen Railway Order 2010 \(S.I. 2010/2136\)](#), art. 1(1), [Sch. 4 para. 12](#)
- C21** Pt. II Ch. II modified (1.9.2010) by [The Port of Bristol \(Deep Sea Container Terminal\) Harbour Revision Order 2010 \(S.I. 2010/2020\)](#), art. 1(2), [Sch. 6 para. 11\(1\)](#) (with arts. 18, 19)
- C22** Pt. II Ch. II modified (1.2.2011) by [The River Mersey \(Mersey Gateway Bridge\) Order 2011 \(S.I. 2011/41\)](#), art. 1, [Sch. 10 para. 41\(1\)](#) (with art. 51, Sch. 10 paras. 6885)

*Status: Point in time view as at 17/09/2018.*

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### *Restrictions on abstraction and impounding*

## 24 Restrictions on abstraction.

- (1) Subject to the following provisions of this Chapter and to any drought order [<sup>F48</sup>or drought permit] under Chapter III of this Part, no person shall—
- (a) abstract water from any source of supply; or
  - (b) cause or permit any other person so to abstract any water,
- except in pursuance of a licence under this Chapter granted by the [<sup>F47</sup>appropriate agency] and in accordance with the provisions of that licence.
- (2) Where by virtue of subsection (1) above the abstraction of water contained in any underground strata is prohibited except in pursuance of a licence under this Chapter, no person shall begin, or cause or permit any other person to begin—
- (a) to construct any well, borehole or other work by which water may be abstracted from those strata;
  - (b) to extend any such well, borehole or other work; or
  - (c) to instal or modify any machinery or apparatus by which additional quantities of water may be abstracted from those strata by means of a well, borehole or other work,
- unless the conditions specified in subsection (3) below are satisfied.
- (3) The conditions mentioned in subsection (2) above are—
- (a) that the abstraction of the water or, as the case may be, of the additional quantities of water is authorised by a licence under this Chapter; and
  - (b) that—
    - (i) the well, borehole or work, as constructed or extended; or
    - (ii) the machinery or apparatus, as installed or modified,
 fulfils the requirements of that licence as to the means by which water is authorised to be abstracted.
- (4) A person shall be guilty of an offence if—
- (a) he contravenes subsection (1) or (2) above; or
  - (b) he is for the purposes of this section the holder of a licence under this Chapter and, in circumstances not constituting such a contravention, does not comply with a condition or requirement imposed by the provisions, as for the time being in force, of that licence.
- (5) A person who is guilty of an offence under this section shall be liable [<sup>F49</sup>on summary conviction, or on conviction on indictment, to a fine].
- (6) The restrictions imposed by this section shall have effect notwithstanding anything in any enactment contained in any Act passed before the passing of the <sup>M6</sup>Water Resources Act 1963 on 31st July 1963 or in any statutory provision made or issued, whether before or after the passing of that Act, by virtue of such an enactment.

#### Textual Amendments

**F47** Words in ss. 23, 24 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(a)** (with Sch. 7)

*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- F48** By S.I. 1996/593, reg. 3, **Sch. 2 para. 8** it is provided that the words “or drought permit” be substituted (1.4.1996) for the words following “drought order”
- F49** Words in s. 24(5) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 4 para. 24(2)** (with reg. 5(1))

#### **Modifications etc. (not altering text)**

- C23** S. 24 excluded (15.1.2010) by [The Eels \(England and Wales\) Regulations 2009 \(S.I. 2009/3344\)](#), regs. 1(b), **21(1)** (with reg. 1(d))
- C24** S. 24 excluded (22.12.2017) by [The M20 Junction 10a Development Consent Order 2017 \(S.I. 2017/1202\)](#), arts. 1, **3(1)(b)** (with arts. 4, 37)
- C25** S. 24 excluded (31.5.2018) by [The Silvertown Tunnel Order 2018 \(S.I. 2018/574\)](#), arts. 1(2), **3(1)(m)**
- C26** S. 24(1) restricted (16.3.1992) by [Aire and Calder Navigation Act 1992 \(c. iv\)](#), s. **17(2)**
- C27** S. 24(1) restricted (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **Sch. 14 para. 15**
- C28** S. 24(1) excluded (21.8.2013) by [The Croxley Rail Link Order 2013 \(S.I. 2013/1967\)](#), arts. 1, **40(1)**
- C29** S. 24(1) excluded (15.12.2014) by [The London Underground \(Northern Line Extension\) Order 2014 \(S.I. 2014/3102\)](#), arts. 1, **17(1)** (with Sch. 8 para. 45)
- C30** S. 24(1) restricted (12.1.2016) by [The London Underground \(Bank Station Capacity Upgrade\) Order 2015 \(S.I. 2015/2044\)](#), arts. 1, **36(1)**
- C31** S. 24(1) restricted (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), **Sch. 21 para. 1**
- C32** S. 24(1) excluded (2.1.2018) by [The Boston Barrier Order 2017 \(S.I. 2017/1329\)](#), arts. 1, **20(1)** (with arts. 55-57, Sch. 8 para. 13)
- C33** S. 24(2) applied (1.1.2018) by [The Water Abstraction and Impounding \(Exemptions\) Regulations 2017 \(S.I. 2017/1044\)](#), regs. 1, **4(6)**
- C34** S. 24(2) excluded (1.1.2018) by [The Water Abstraction and Impounding \(Exemptions\) Regulations 2017 \(S.I. 2017/1044\)](#), regs. 1, **9(1)**

#### **Marginal Citations**

- M6** 1963 c. 38.

### [<sup>F50</sup>24A Abstraction licences

- (1) Each licence to abstract water shall be of one of the following three types—
- (a) a licence to abstract water from one source of supply over a period of twenty-eight days or more for any purpose (a “full licence”);
  - (b) a licence to abstract water from one source of supply over a period of twenty-eight days or more for the purpose of—
    - (i) transferring water to another source of supply; or
    - (ii) transferring water to the same source of supply, but at another point, in the course of dewatering activities in connection with mining, quarrying, engineering, building or other operations (whether underground or on the surface),in either case without intervening use (a “transfer licence”);
  - (c) a licence to abstract water from one source of supply over a period of less than twenty-eight days (a “temporary licence”).
- (2) In this Act, a reference (however expressed) to a licence to abstract water is to be taken as a reference to all types of licence, unless it is clear that a different meaning is intended.]

*Status: Point in time view as at 17/09/2018.*

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### Textual Amendments

**F50** S. 24A inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 1(1)**, 105(3); S.I. 2006/984, art. 2(a) (with [Sch. paras. 1, 2](#))

## 25 Restrictions on impounding.

[<sup>F51</sup>(1) Subject to the following provisions of this Chapter and to any drought order or drought permit under Chapter 3 of this Part, no person shall—

- (a) begin, or cause or permit any other person to begin, to construct or alter any impounding works at any point in any inland waters which are not discrete waters; or
- (b) cause or permit the flow of any inland waters which are not discrete waters to be obstructed or impeded at any point by means of impounding works,

unless (in either case) the conditions mentioned in subsection (1A) below are satisfied.

(1A) The conditions are—

- (a) a licence under this Chapter granted by the [<sup>F52</sup>appropriate agency] to obstruct or impede the flow of those inland waters at that point by means of impounding works is in force;
- (b) the impounding works will not (or, as the case may be, do not) obstruct or impede the flow of the inland waters except to the extent, and in the manner, authorised by the licence; and
- (c) any other conditions or requirements imposed by the provisions, as for the time being in force, of the licence (whether as to the provision of compensation water or otherwise) are complied with.]

(2) A person shall be guilty of an offence if—

- (a) he contravenes subsection (1) above; or
- (b) he is for the purposes of this section the holder of a licence under this Chapter and <sup>F53</sup>... does not comply with a condition or requirement imposed by the provisions, as for the time being in force, of that licence.

(3) A person who is guilty of an offence under this section shall be liable [<sup>F54</sup>on summary conviction, or on conviction on indictment, to a fine].

(4) Subject to subsection (5) below, the restrictions imposed by this section shall have effect notwithstanding anything in any enactment contained in any Act passed before the passing of the <sup>M7</sup>Water Resources Act 1963 on 31st July 1963 or in any statutory provision made or issued, whether before or after the passing of that Act, by virtue of such an enactment.

(5) Subject to subsection (6) below, the restriction on impounding works [<sup>F55</sup>shall not apply in respect of any impounding works], if—

- (a) the construction or alteration of those works; or
- (b) the obstruction or impeding of the flow of the inland waters resulting from the construction or alteration of the works,

is authorised (in whatsoever terms, and whether expressly or by implication) by virtue of any such statutory provision as at the coming into force of this Act was an alternative statutory provision for the purposes of section 36(2) of the Water Resources Act 1963.



*Status: Point in time view as at 17/09/2018.*

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- (6) The provisions of this Chapter shall have effect in accordance with subsection (7) below where by virtue of any such provision as is mentioned in subsection (5) above and is for the time being in force—
- (a) any water undertaker or sewerage undertaker to which rights under that provision have been transferred in accordance with a scheme under Schedule 2 to the <sup>M8</sup>Water Act 1989 or Schedule 2 to the <sup>M9</sup>Water Industry Act 1991; or
  - (b) any other person,
- is authorised (in whatsoever terms, and whether expressly or by implication) to obstruct or impede the flow of any inland waters by means of impounding works (whether those works have already been constructed or not).
- (7) Where subsection (6) above applies, the provisions of this Chapter shall have effect (with the necessary modifications), where the reference is to the revocation or variation of a licence under this Chapter, as if—
- (a) any reference in those provisions to a licence under this Chapter included a reference to the authorisation mentioned in that subsection; and
  - (b) any reference to the holder of such a licence included a reference to the undertaker or other person so mentioned.
- (8) In this Chapter “impounding works” means either of the following, that is to say—
- (a) any dam, weir or other works in any inland waters by which water may be impounded;
  - (b) any works for diverting the flow of any inland waters in connection with the construction or alteration of any dam, weir or other works falling within paragraph (a) above.
- [<sup>F56</sup>(9) In relation to impounding works, references to alteration include the removal or partial removal of those works, and cognate expressions shall be construed accordingly.]

#### Textual Amendments

- F51** S. 25(1)(1A) substituted for s. 25(1) (1.4.2006) by [Water Act 2003 \(c. 37\), ss. 2\(2\), 105\(3\)](#) (with s. 2(10)); [S.I. 2006/984, art. 2\(b\)](#) (with Sch. para. 2)
- F52** Words in s. 25(1A)(a) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 270\(b\)](#) (with Sch. 7)
- F53** Words in s. 25(2) repealed (1.4.2006) by [Water Act 2003 \(c. 37\), ss. 2\(3\), 105\(3\), Sch. 9 Pt. 1](#) (with s. 2(10)); [S.I. 2006/984, art. 2\(b\)\(s\)\(ii\)](#) (with Sch. para. 2)
- F54** Words in s. 25(3) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\), reg. 1\(1\), Sch. 4 para. 24\(3\)](#) (with reg. 5(1))
- F55** Words in s. 25(5) substituted (1.4.2006) by [Water Act 2003 \(c. 37\), ss. 2\(4\), 105\(3\)](#) (with s. 2(10)); [S.I. 2006/984, art. 2\(b\)](#) (with Sch. para. 2)
- F56** S. 25(9) added (1.4.2006) by [Water Act 2003 \(c. 37\), ss. 2\(5\), 105\(3\)](#) (with s. 2(10)); [S.I. 2006/984, art. 2\(b\)](#) (with Sch. para. 2)

#### Modifications etc. (not altering text)

- C35** S. 25 excluded (15.1.2010) by [The Eels \(England and Wales\) Regulations 2009 \(S.I. 2009/3344\), regs. 1\(b\), 21\(1\)](#) (with reg. 1(d))
- C36** S. 25 excluded (30.6.2015) by [The Swansea Bay Tidal Generating Station Order 2015 \(S.I. 2015/1386\), arts. 1, 46](#) (with arts. 51, 53)
- C37** S. 25 excluded (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\), s. 70\(1\), Sch. 21 para. 2](#)

*Status: Point in time view as at 17/09/2018.*

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- C38** S. 25 excluded (2.1.2018) by [The Boston Barrier Order 2017 \(S.I. 2017/1329\)](#), arts. 1, **20(2)** (with arts. 55-57, Sch. 8 para. 13)
- C39** S. 25(1)(b) modified (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 3, 105(3); S.I. 2006/984, art. 2(c) (with Sch. para. 2)

#### Marginal Citations

- M7** 1963 c. 38.  
**M8** 1989 c. 15.  
**M9** 1991 c. 56.

### <sup>F57</sup>25A Enforcement notices

- (1) Subject to the following provisions of this section, where it appears to the [<sup>F58</sup>appropriate agency] that a person is—
  - (a) in breach of section 24(1) or (2) or section 25(1) above; or
  - (b) for the purposes of section 24 or 25 above a holder of a licence under this Chapter and has not complied with a condition or requirement imposed by the provisions, as for the time being in force, of that licence,
 the [<sup>F58</sup>appropriate agency] shall be entitled to serve an enforcement notice on him if the condition in subsection (2) below is satisfied.
- (2) The condition is that it appears to the [<sup>F58</sup>appropriate agency] that the breach or failure to comply is causing or is likely to cause significant damage to the environment.
- (3) An enforcement notice is a notice requiring the person on whom it is served—
  - (a) to cease his breach of section 24(1) or (2) or section 25(1) above, or to comply with the condition or requirement in question; and
  - (b) to carry out any works or operations specified in the notice.
- (4) The works or operations which may be specified are works or operations which it appears to the [<sup>F58</sup>appropriate agency] are appropriate for the purpose of remedying or mitigating the effects of the breach or failure to comply, and may include—
  - (a) works or operations for the purpose, so far as it is reasonably practicable to do so, of restoring any affected waters, including any flora and fauna dependent on them, to their state immediately before the breach or failure to comply; and
  - (b) in the case of a breach of section 25(1) above, the removal of any unauthorised impounding works or the reversal of any unauthorised alteration to impounding works.
- (5) An enforcement notice must specify the periods within which the person on whom it is served must do each of the things specified in the notice.
- (6) Before serving an enforcement notice on any person, the [<sup>F58</sup>appropriate agency] shall take reasonable steps to consult that person about the works or operations which are to be specified in the notice.
- (7) The Secretary of State may by regulations make provision for or in connection with—
  - (a) the form or content of enforcement notices;
  - (b) requirements for consultation, before the service of an enforcement notice, with persons other than the person upon whom the notice is to be served;
  - (c) steps to be taken for the purposes of any consultation required under subsection (6) above or regulations made by virtue of paragraph (b) above;

*Status: Point in time view as at 17/09/2018.*

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- (d) any other steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of an enforcement notice.
- (8) An enforcement notice is not invalid, or invalidly served, merely because of a failure to comply with subsection (6) above or with regulations made by virtue of subsection (7) (b) above.
- (9) The Secretary of State may, if he thinks fit in relation to any person, give directions to the [<sup>F58</sup>appropriate agency] as to whether or how it should exercise its powers under this section.
- (10) In proceedings for any offence under section 24 or 25 above against a person upon whom an enforcement notice has been served, the following are not to be taken as evidence that he has committed the offence—
- (a) the fact that an enforcement notice has been served on him;
  - (b) the fact that he does not appeal against it;
  - (c) the fact that on an appeal against it the notice is confirmed (whether with or without modifications).

#### Textual Amendments

**F57** Ss. 25A-25C inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 30**, 105(3); S.I. 2006/984, art. 2(o)

**F58** Words in s. 25A substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(c)** (with Sch. 7)

#### Modifications etc. (not altering text)

**C40** S. 25A excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **26**

**C41** Ss. 25A(5)-(9) applied (with modifications) (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 4(3)(a)**, 105(3); S.I. 2006/984, art. 2(d)

## 25B Rights of entry and appeals

Sections 161B and 161C below (including any power to make regulations) shall apply in relation to enforcement notices as they apply in relation to works notices under section 161A below.

#### Textual Amendments

**F57** Ss. 25A-25C inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 30**, 105(3); S.I. 2006/984, art. 2(o)

#### Modifications etc. (not altering text)

**C42** S. 25B excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **26**

## 25C Consequences of not complying with an enforcement notice

- (1) If a person on whom the [<sup>F59</sup>appropriate agency] serves an enforcement notice fails to comply with any of its requirements, he shall be guilty of an offence.

*Status: Point in time view as at 17/09/2018.*

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- (2) A person who commits an offence under subsection (1) above shall be liable [<sup>F60</sup>on summary conviction, or on conviction on indictment, to a fine].
- (3) If a person on whom an enforcement notice has been served fails to comply with any of its requirements, the [<sup>F59</sup>appropriate agency] may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by the [<sup>F59</sup>appropriate agency] in doing it.
- (4) If the [<sup>F59</sup>appropriate agency] 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 an enforcement notice, the [<sup>F59</sup>appropriate agency] may take proceedings in the High Court for the purpose of securing compliance with the notice.]

#### Textual Amendments

- F57** Ss. 25A-25C inserted (1.4.2006) by [Water Act 2003 \(c. 37\), ss. 30, 105\(3\)](#); S.I. 2006/984, art. 2(o)
- F59** Words in s. 25C substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 270\(d\)](#) (with Sch. 7)
- F60** Words in s. 25C(2) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\), reg. 1\(1\), Sch. 4 para. 24\(4\)](#) (with reg. 5(1))

#### Modifications etc. (not altering text)

- C43** S. 25C excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\), regs. 1\(2\), 26](#)

### *Rights to abstract or impound*

#### <sup>F61</sup>26 **Rights of navigation, harbour and conservancy authorities.**

- (1) Subject to subsection (2) below, the restriction on abstraction shall not apply to any transfer, without intervening use, of water from inland waters described in the first column of the Table below to inland waters described in the corresponding entry in the second column, if the transfer is in the course of, or results from, any operations carried out by a navigation authority, harbour authority or conservancy authority in the carrying out of their functions as such an authority.

<i>Transfer from</i>	<i>Transfer to</i>
A water system of the authority's.	The same water system.
A water system of the authority's.	Inland waters not forming part of that water system.
A supply reservoir of the authority's.	A water system of the authority's with which that reservoir is connected.

- (2) Subsection (1) above shall not apply to a transfer of water from a water system to any inland waters outside that water system in order to—
- (a) empty a dry dock; or

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- (b) introduce into those inland waters all or part of a quantity of water to be abstracted from any connected inland waters in pursuance of a licence to do so granted under this Chapter.
- (3) The restriction on impounding works shall not apply to—
- (a) the construction or alteration of impounding works; or
  - (b) the obstruction or impeding of inland waters by means of impounding works, in the course of the performance by a navigation authority, harbour authority or conservancy authority of their functions as such an authority, unless the construction, alteration, obstruction or impeding affects any inland waters in relation to which the authority does not have functions.
- (4) In this section, references to—
- (a) an authority’s water system are to a water system in relation to which the authority has functions;
  - (b) an authority’s supply reservoir are to a reservoir—
    - (i) belonging to a navigation authority;
    - (ii) used for the purposes of supplying that navigation authority’s water system; and
    - (iii) which does not discharge to any inland waters other than that water system.
- (5) For the purposes of this section, “water system” means the canals, the harbours, or the canals and harbours constituting the system in question—
- (a) together with the locks, docks, balancing reservoirs, weirs and other works associated with the system (other than any supply reservoir as described in subsection (4)(b) above); but
  - (b) excluding any part of the system which consists of a navigable river or part of one.]

#### Textual Amendments

**F61** S. 26 substituted (1.1.2018) by [Water Act 2003 \(c. 37\)](#), **ss. 5, 105(3)**; [S.I. 2017/1043](#), art. 2(a)

#### [<sup>F62</sup>27 **Rights to abstract small quantities.**

- (1) The restriction on abstraction shall not apply to any abstraction of a quantity of water not exceeding twenty cubic metres in any period of twenty-four hours, if the abstraction does not form part of a continuous operation, or of a series of operations, by which a quantity of water which, in aggregate, is more than twenty cubic metres is abstracted during the period.
- (2) In the case of any abstraction of water from underground strata which falls within subsection (1) above, the restriction imposed by section 24(2) above shall not apply—
- (a) to the construction or extension of any well, borehole or other work; or
  - (b) to the installation or modification of machinery or other apparatus,
- if the well, borehole or other work is constructed or extended, or the machinery or apparatus is installed or modified, for the purpose of abstracting the water.

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- (3) Where a person is authorised by a licence under this Chapter to carry on a particular abstraction operation (or series of operations), this section does not permit him to carry it on beyond the authorisation conferred by the licence.

#### Textual Amendments

**F62** Ss 27, 27A substituted (1.4.2004 for the insertion of s. 27A, 1.4.2005 in so far as not already in force) for s. 27 by [Water Act 2003 \(c. 37\)](#), **ss. 6(1), 105(3)**; S.I. 2004/641, art. 3(a) (with [Sch. 3 paras. 17](#)); S.I. 2005/968, art. 2(a)

### 27A Variation of small quantity threshold

- (1) The Secretary of State may by order made by statutory instrument provide that section 27(1) above is to have effect in relation to—
- (a) a geographical area; or
  - (b) a class of inland waters; or
  - (c) a class of underground strata; or
  - (d) a class of inland waters or of underground strata within a geographical area, (in each case as specified in the order) as if for “twenty cubic metres” there were substituted another quantity specified in the order.
- (2) The Secretary of State shall not make such an order except upon the application of the [<sup>F63</sup>appropriate agency]; but he may direct the [<sup>F63</sup>appropriate agency] to make such an application.
- (3) Such an order may—
- (a) make different provision in relation to the different paragraphs in subsection (1) above; and
  - (b) make different provision for different areas, waters or underground strata.
- (4) Schedule 6 to this Act shall have effect with respect to applications for orders under subsection (1) above and with respect to the making of such orders.
- (5) An order under subsection (1) above which specifies a greater quantity than the one which previously had effect in relation to the area, waters or strata in question may make provision for a licence to abstract water granted under this Chapter—
- (a) which is for the time being in force; but
  - (b) which by virtue of the order has become wholly or partly unnecessary, to cease to have effect, or to cease to have effect to the extent specified in the order.
- (6) An order under subsection (1) above may include provision for or in relation to the payment by the [<sup>F63</sup>appropriate agency] of compensation, in cases specified in the order, to a person who—
- (a) immediately before the making of an order under subsection (1) above, had been in a position to carry out an abstraction to which, by virtue of section 27(1) above, the restriction on abstraction did not apply;
  - (b) following the making of that order, requires a licence under this Chapter in order to carry out that abstraction; and
  - (c) has suffered loss or damage as a result of his having been—
    - (i) refused such a licence in respect of that abstraction; or

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- (ii) granted such a licence, but in respect of an abstraction of more limited extent than the one he had been in a position to carry out.
- (7) Paragraphs (e) and (f) of section 219(2) below apply in relation to orders under subsection (1) above as they apply to regulations made under this Act.
- (8) A statutory instrument containing an order under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F62** Ss 27, 27A substituted (1.4.2004 for the insertion of s. 27A, 1.4.2005 in so far as not already in force) for s. 27 by [Water Act 2003 \(c. 37\)](#), [ss. 6\(1\), 105\(3\)](#); [S.I. 2004/641, art. 3\(a\)](#) (with [Sch. 3 paras. 17](#)); [S.I. 2005/968, art. 2\(a\)](#)
- F63** Words in s. 27A substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 270\(e\)](#) (with [Sch. 7](#))

## 28 Curtailment of rights under section 27.

- [<sup>F64</sup>(1) The provisions of this section shall have effect where a person (“the occupier”) is entitled, by virtue of subsection (6) of section 27 above, to a protected right for the purposes of this Chapter by reason of his being the occupier of such a holding as is mentioned in subsection (4) of that section in relation to an abstraction falling within that subsection (“the holding”).
- (2) If it appears to the [<sup>F65</sup>Agency] that the occupier is entitled, as against other occupiers of land contiguous to the inland waters in question, to abstract water from those waters for use on part of the holding (“the relevant part”), but is not so entitled to abstract water for use on other parts of the holding—
  - (a) the [<sup>F65</sup>Agency] may serve on him a notice specifying the relevant part of the holding; and
  - (b) subject to the following provisions of this section, the notice shall have effect so as to require subsections (3) and (4) of section 27 above to be construed in relation to the holding as if the references in subsection (4) to use on the holding were references to use on the part of the holding specified in the notice.
- (3) Where a notice is served under subsection (2) above and the occupier objects to the notice on the grounds—
  - (a) that he is entitled, as against other occupiers of land contiguous to the inland waters in question, to abstract water from those waters for use on every part of the holding; or
  - (b) that he is so entitled to abstract water for use on a larger part of the holding than that specified in the notice,he may, within such period (not being less than twenty-eight days from the date of service of the notice) and in such manner as may be prescribed, appeal to the court against the notice.
- (4) On any appeal under subsection (3) above, the court shall determine the matter in dispute and, in accordance with its decision, confirm, quash or vary the [<sup>F65</sup>Agency’s] notice and—

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- (a) where the court quashes a notice served under subsection (2) above, paragraph (b) of that subsection shall not have effect; and
  - (b) where the court varies such a notice, that paragraph shall have effect, but with the substitution, for the reference to the part of the holding specified in the notice, of a reference to the part specified in the notice as varied by the court.
- (5) In this section—
- “the court” means the county court for the district in which the holding, or the part of the holding which is contiguous to the inland waters in question, is situated; and
  - “entitled” (except in subsection (1) above) means entitled apart from this Chapter or any other statutory provision.]

#### Textual Amendments

- F64** S. 28 repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 6(2), 105(3), [Sch. 9 Pt. 1](#); S.I. 2005/968, art. 2(a)(n)
- F65** Words in s. 28 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25](#), s. 120, [Sch. 22 para. 128](#) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

## 29 Rights to abstract for drainage purposes etc.

- (1) The restriction on abstraction shall not apply to any abstraction of water from a source of supply in the course of, or resulting from, any operations for purposes of land drainage.
- [<sup>F66</sup>(1A) The restriction on abstraction shall not apply to any abstraction of water from inland waters within the district of an internal drainage board if—
- (a) the abstraction is carried out by or on behalf of that board in connection with its functions;
  - (b) the water abstracted is transferred to another area of inland waters within the board’s district without intervening use; and
  - (c) the sole or main purpose of the transfer is to augment that other area of inland waters.]
- [<sup>F67</sup>(2) The restriction on abstraction shall not apply to any abstraction of water from a source of supply in so far as the abstraction (where it does not fall within subsection (1) or (1A) above) is an emergency abstraction and the person abstracting the water complies with subsection (2B) below.
- (2A) An abstraction of water is an emergency abstraction if, in the opinion of the abstractor, an emergency has arisen which makes the abstraction necessary to prevent immediate danger of interference with any mining, quarrying, engineering, building or other operations (whether underground or on the surface) or, in relation to such operations, to prevent an immediate risk—
- (a) to a human being of death, personal injury or harm to health;
  - (b) of serious damage to works resulting from any such operations; or
  - (c) of serious damage to the environment.
- (2B) In the case of any emergency abstraction, the person abstracting the water shall before the end of the period of five days beginning with the date on which the abstraction started give notice to the appropriate agency of—



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- (a) the abstraction and of the source of supply in question; and
- (b) the reasons for the abstractor’s opinion that an emergency had arisen and that the abstraction was necessary.

(2C) The appropriate agency may give notice to the person referred to in subsection (2B) above that in the appropriate agency's opinion an emergency had not arisen, or that the abstraction is not, or is no longer, necessary for any of the reasons set out in subsection (2A) above; and, if the appropriate agency does so, the restriction on abstraction shall apply to the abstraction from the time when the notice is served (and, if applicable, the restriction imposed by section 24(2) above shall apply accordingly).]

<sup>F68</sup>(3) .....

- (4) In the case of any abstraction of water from underground strata which falls within subsection (1) or (2) above, the restriction imposed by section 24(2) above shall not apply—
- (a) to the construction or extension of any well, borehole or other work; or
  - (b) to the installation or modification of machinery or other apparatus,
- if the well, borehole or other work is constructed or extended, or the machinery or apparatus is installed or modified, for the purpose of abstracting the water.

[<sup>F69</sup>(5) In this section, “land drainage”—

- (a) includes the protection of land against erosion or encroachment by water, whether from inland waters or from the sea; but
- (b) does not include warping, irrigation (including spray irrigation), or transferring water from one source of supply to another (whether with or without intervening use) solely or mainly in order to augment the latter.]

**Textual Amendments**

- F66** S. 29(1A) inserted (1.1.2018) by [Water Act 2003 \(c. 37\)](#), **ss. 7(2)**, 105(3); S.I. 2017/1043, art. 2(b)
- F67** S. 29(2)-(2C) substituted for s. 29(2) (1.1.2018) by [Water Act 2003 \(c. 37\)](#), **ss. 7(3)**, 105(3); S.I. 2017/1043, art. 2(b) (as amended (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (No. 755), art. 1(2), Sch. 2 para. 417(2)(a) (with Sch. 7))
- F68** S. 29(3) repealed (1.1.2018) by [Water Act 2003 \(c. 37\)](#), **ss. 7(4)**, 105(3), **Sch. 9 Pt. 1**; S.I. 2017/1043, art. 2(b)(h)
- F69** S. 29(5) substituted (1.1.2018) by [Water Act 2003 \(c. 37\)](#), **ss. 7(5)**, 105(3); S.I. 2017/1043, art. 2(b)

<sup>F70</sup>**30 Notices with respect to borings not requiring licences.**

.....

**Textual Amendments**

- F70** S. 30 repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 8(3)**, 105(3), **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(e)(s)(ii) (with savings in [Sch. paras. 4, 5](#))

<sup>F71</sup>**31 Appeals against conservation notices under section 30.**

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#### **Textual Amendments**

- F71** S. 31 repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 8(3), 105(3), [Sch. 9 Pt. 1](#); S.I. 2006/984, art. 2(e)(s)(ii) (with savings in [Sch. paras. 4, 5](#))

### **32 Miscellaneous rights to abstract.**

- (1) The restriction on abstraction shall not apply to any abstraction by machinery or apparatus installed on a vessel, where the water is abstracted for use on that, or any other, vessel.
- (2) The restriction on abstraction and the other restrictions imposed by section 24 above shall not apply to the doing of anything—
  - (a) for [<sup>F72</sup>extinguishing fires or protecting life and property in the event of fire]; or
  - (b) for the purpose of testing apparatus used for [<sup>F73</sup>either of] those purposes or of training or practice in the use of such apparatus.
- (3) The restriction on abstraction and the other restrictions imposed by section 24 above shall not apply—
  - (a) to any abstraction of water;
  - (b) to the construction or extension of any well, borehole or other work; or
  - (c) to the installation or modification of machinery or other apparatus,
 if the abstraction, construction, extension, installation or modification is for any of the purposes specified in subsection (4) below and takes place with the consent of the [<sup>F74</sup>appropriate agency] and in compliance with any conditions imposed by the [<sup>F74</sup>appropriate agency].
- (4) The purposes mentioned in subsection (3) above are—
  - (a) the purpose of ascertaining the presence of water in any underground strata or the quality or quantity of any such water; and
  - (b) the purpose of ascertaining the effect of abstracting water from the well, borehole or other work in question on the abstraction of water from, or the level of water in, any other well, borehole or other work or any inland waters.

#### **Textual Amendments**

- F72** Words in s. 32(2)(a) substituted (1.10.2004 except in relation to W., 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), s. 61, [Sch. 1 para. 79\(a\)](#); S.I. 2004/2304, art. 2; S.I. 2004/2917, art. 2
- F73** Words in s. 32(2)(b) inserted (1.10.2004 except in relation to W., 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), s. 61, [Sch. 1 para. 79\(b\)](#); S.I. 2004/2304, art. 2; S.I. 2004/2917, art. 2
- F74** Words in s. 32(3) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(f\)](#) (with [Sch. 7](#))

### **<sup>F75</sup>33 Power to provide for further rights to abstract.**

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*Status: Point in time view as at 17/09/2018.*

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### Textual Amendments

**F75** S. 33 repealed with a saving (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 10(11), 105(3), [Sch. 9 Pt. 1](#); S.I. 2004/641, art. 3(c)(z)

## [<sup>F76</sup>33A Power to provide for further exemptions

- (1) The Secretary of State may make regulations providing for further cases in which—
  - (a) the restriction on abstraction (and, in the case of abstractions from underground strata, the other restrictions imposed by section 24 above); or
  - (b) the restriction on impounding works,shall not apply; and in this section such a case is referred to as an “exemption”.
- (2) The regulations may, in particular, make provision, in relation to an exemption—
  - (a) for the exemption to apply only for a prescribed period;
  - (b) for the exemption not to apply unless prescribed conditions are satisfied, or continue to be satisfied;
  - (c) for the [<sup>F77</sup>appropriate agency] to be notified, or its consent obtained—
    - (i) before any particular abstraction operation or series of such operations begins; or
    - (ii) in connection with such an operation or series of operations relating to the abstraction of water in underground strata, before any other thing which is mentioned in section 24(2) above is done; or
    - (iii) before any impounding works are constructed or altered,in reliance on the exemption.
- (3) The regulations may provide for an exemption to apply generally or to relate to—
  - (a) a prescribed geographical area;
  - (b) a prescribed source of supply (in the case of an exemption from the restriction on abstraction or the other restrictions imposed by section 24 above); or
  - (c) prescribed inland waters (in the case of an exemption from the restriction on impounding works).
- (4) Subject to subsection (5) below, if regulations under this section provide for an exemption falling within subsection (1)(a) above, the regulations shall—
  - (a) if appropriate, make provision for the exemption not to permit a person who is authorised by a licence under this Chapter to carry on an abstraction operation (or series of operations) to carry it on beyond the authorisation conferred by the licence; and
  - (b) make provision as to whether or not, in relation to any abstraction, the exemption provided for by the regulations is to be counted cumulatively with any other exemption which a person has by virtue of this section or section 27 above.
- (5) The regulations may make provision for a licence granted under this Chapter and which is for the time being in force to cease to have effect, or to cease to have effect to the extent specified in the regulations, if it authorises an activity which falls to any extent within the exemption provided for by the regulations.]

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#### Textual Amendments

- F76** S. 33A inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 9, 105(3)**; S.I. 2004/641, art. 3(b) (with Sch. 3 paras. 17)
- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)

### *Applications for a licence*

#### 34 Regulations with respect to applications.

- (1) Any application for a licence under this Chapter shall be made in such manner as may be prescribed, and shall include such particulars, [<sup>F78</sup>be accompanied by such reports, ] and be verified by such evidence, as may be prescribed.
- (2) The Secretary of State may by regulations make provision as to the manner in which applications for the grant of licences under this Chapter are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such applications or decisions on such applications [<sup>F79</sup>, and provision for making such applications available for public inspection.]
- (3) Without prejudice to the generality of subsection (2) above, provision shall be made by regulations under this section for securing that, in such circumstances as may be prescribed (being circumstances in which it appears to the Secretary of State that applications for licences under this Chapter would be of special concern to National Park <sup>F80</sup> . . . authorities)—
  - (a) notice of any such application will be given to such one or more National Park <sup>F80</sup> . . . authorities as may be determined in accordance with the regulations; and
  - (b) the matters to which the [<sup>F77</sup>appropriate agency] or, as the case may be, the Secretary of State is to have regard in dealing with the application will include any representations made by any such National Park <sup>F80</sup> . . . authority within such period and in such manner as may be prescribed.
- (4) The preceding provisions of this section shall have effect subject to any express provision contained in, or having effect by virtue of, any other enactment contained in this Chapter; and any regulations made under this section shall have effect subject to any such express provision.

<sup>F81</sup>(5) . . . . .

#### Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F78** Words in s. 34(1) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 2(a)**; S.I. 2004/2528, art. 2(t)(i) (with Sch. para. 8)
- F79** Words in s. 34(2) added (1.10.2004) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 2(b)**; S.I. 2004/2528, art. 2(t)(i) (with Sch. para. 8)
- F80** Words in s. 34 repealed (1.4.1997) by [1995 c. 25](#), s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**

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**F81** S. 34(5) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, art. 2, **Sch.**

### **35 Restrictions on persons who may make applications for abstraction licences.**

- (1) No application for a licence under this Chapter to abstract water shall be entertained unless it is made by a person entitled to make the application in accordance with the following provisions of this section.
- <sup>F82</sup>(2) In relation to abstractions from any inland waters, a person shall be entitled to make the application if, as respects the place (or, if more than one, as respects each of the places) at which the proposed abstractions are to be effected, he satisfies the [<sup>F77</sup>appropriate agency] that—
  - (a) he has, or at the time when the proposed licence is to take effect will have, a right of access to land contiguous to the inland waters at that place (or those places); and
  - (b) he will continue to have such a right for the period of at least one year beginning with the date on which the proposed licence is to take effect, or until it is to expire (if sooner).
- (3) In relation to abstractions from underground strata, a person shall be entitled to make the application if he satisfies the [<sup>F77</sup>appropriate agency] that—
  - (a) he has, or at the time when the proposed licence is to take effect will have, a right of access to land consisting of or comprising those underground strata; and
  - (b) he will continue to have such a right for the period of at least one year beginning with the date on which the proposed licence is to take effect, or until it is to expire (if sooner).
- (3A) The [<sup>F77</sup>appropriate agency] may, in particular, take evidence of a person's occupation of land to be evidence of his right of access to it.]
- (4) Any reference in this section to a person who [<sup>F83</sup>will have a right of access to] land of any description—
  - (a) includes a reference to a person who satisfies the [<sup>F77</sup>appropriate agency] that he has entered into negotiations for the acquisition of an interest in land of that description such that, if the interest is acquired by him, he will be entitled to [<sup>F84</sup>a right of access to ] that land; and
  - (b) without prejudice to the application of paragraph (a) above to a person who is or can be authorised to acquire land compulsorily, also includes any person who satisfies the [<sup>F77</sup>appropriate agency] that by virtue of any enactment, the compulsory acquisition by that person of land of that description either has been authorised or can be authorised and has been initiated.
- (5) In subsection (4) above the reference to initiating the compulsory acquisition of land by a person is a reference to—
  - (a) the submission to the relevant Minister of a draft of an order which, if made by that Minister in the form of the draft, will authorise that person to acquire that land compulsorily, with or without other land; or
  - (b) the submission to the relevant Minister of an order which, if confirmed by that Minister as submitted will authorise that person to acquire that land compulsorily, with or without other land.

*Status: Point in time view as at 17/09/2018.*

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- (6) In subsection (5) above “the relevant Minister”, in relation to the compulsory acquisition of land by any person, means the Minister who, in accordance with the enactment mentioned in subsection (4)(b) above, is empowered to authorise that person to acquire land compulsorily.

#### Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), **Sch. 2 para. 270(g)** (with [Sch. 7](#))
- F82** S. 35(2)(3)(3A) substituted for s. 35(2)(3) (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 11(2)**, 105(3); S.I. 2006/984, [art. 2\(f\)](#) (with [Sch. paras. 67\(3\)](#))
- F83** Words in s. 35(4) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 11(3)(a)**, 105(3); S.I. 2006/984, [art. 2\(f\)](#) (with [Sch. paras. 67\(3\)](#))
- F84** Words in s. 35(4)(a) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 11(3)(b)**, 105(3); S.I. 2006/984, [art. 2\(f\)](#) (with [Sch. paras. 67\(3\)](#))

#### Modifications etc. (not altering text)

- C44** S. 35 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), [reg. 1\(2\)](#), **Sch. 2 para. 8(1)**

### <sup>F85</sup>36 Application for combined abstraction and impounding licence.

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#### Textual Amendments

- F85** S. 36 repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 12**, 105(3), **Sch. 9 Pt. 1**; S.I. 2006/984, [art. 2\(g\)\(s\)\(ii\)](#) (with [Sch. paras. 1, 2](#))

### [<sup>F86</sup>36A Applications: types of abstraction licence

- (1) The [<sup>F77</sup>appropriate agency] may decide that—
- (a) an application for a full licence, a transfer licence or a temporary licence ought to be for one of the other types of licence;
  - (b) a number of applications for licences (of any type or types) to abstract water from a particular source of supply ought to be treated as an application for a single such licence (of any type);
  - (c) an application for a single licence (of any type) to abstract water from a particular source of supply ought to be treated as a number of applications for such licences (of any type or types); or
  - (d) any such application as is referred to above ought to be accompanied by an application for revocation of an existing licence to abstract water.
- (2) The [<sup>F77</sup>appropriate agency] may arrive at the decision referred to in paragraph (a), (b), (c) or (d) of subsection (1) above on the basis of its assessment of any one or more of the following—
- (a) the likely effect of the abstraction (or abstractions) for which the applicant has applied for a licence (or licences);

*Status: Point in time view as at 17/09/2018.*

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- (b) the likely effect of that abstraction (or those abstractions) taken together with abstractions under any other licence held by the applicant, or abstractions which would be authorised under any other licence for which the applicant has applied;
  - (c) any other prescribed matter.
- (3) If the [F77 appropriate agency] does so decide, it shall serve a notice of its decision on the applicant; and, subject to subsections (4) to (8) below, shall deal with the application (or applications) accordingly (which, if the [F77 appropriate agency] made the decision referred to in paragraph (d) of subsection (1) above in relation to any application (or applications), means not publishing any notice under section 37 below, or taking any further step in connection with the application (or applications), until the application for revocation has been received).
- (4) The applicant may by notice appeal to the Secretary of State against the decision, and shall serve a copy of any such notice on the [F77 appropriate agency].
- (5) That notice, and the copy of it, shall be served in such manner and within such period as may be prescribed.
- (6) If the [F77 appropriate agency] serves a notice under subsection (3) above, it shall not publish any notice under section 37 below, or take any further step in connection with the application (or applications), before—
- (a) the end of the period within which notice of an appeal may be served on the Secretary of State; or
  - (b) if notice of an appeal is so served, the appeal has been determined.
- (7) The Secretary of State—
- (a) may allow or dismiss the appeal, or vary any part of the decision of the [F77 appropriate agency], whether the appeal relates to that part of the decision or not; and
  - (b) shall direct the [F77 appropriate agency] to deal with the application, or applications, accordingly (which, if the [F77 appropriate agency's] decision was made under paragraph (d) of subsection (1) above in relation to any such application, and that decision is upheld, may mean not publishing any notice under section 37 below, or taking any further step in connection with the application, until the application for revocation has been received).
- (8) Subsections (2) and (7) of section 44 below apply in relation to an appeal under this section as they apply in relation to an appeal under section 43 below.
- (9) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals).]

#### Textual Amendments

**F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)

**F86** S. 36A inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 13(1)**, 105(3); S.I. 2006/984, art. 2(h) (with Sch. para. 7)

*Status: Point in time view as at 17/09/2018.*

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**Modifications etc. (not altering text)**

**C45** S. 36A excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), [Sch. 2 para. 8\(2\)](#)

**[<sup>F87</sup>37 Publication of application for licence.**

- (1) The [<sup>F77</sup>appropriate agency] shall publish a notice of an application for—
  - (a) a full licence or a transfer licence; or
  - (b) a licence under this Chapter to obstruct or impede the flow of any inland waters by means of impounding works,
 in the prescribed way or (if no way is prescribed) in a way calculated to bring the application to the attention of persons who in the [<sup>F77</sup>appropriate agency's] view are likely to be affected by the licence.
- (2) Not later than the date on which that notice is first published, the [<sup>F77</sup>appropriate agency] shall also serve a copy of it on the persons referred to in subsection (3) below (except the applicant, if the applicant is one of those persons).
- (3) Those persons are—
  - (a) any water undertaker within whose area any proposed point of abstraction or impounding is situated;
  - (b) any navigation authority, harbour authority or conservancy authority having functions in relation to any inland waters at any such proposed point; and
  - (c) the drainage board for any internal drainage district within which any such proposed point is situated,
 but paragraphs (b) and (c) above do not apply if the licence applied for is exclusively for the abstraction of water from a source of supply that does not form part of any inland waters.
- (4) A notice for the purposes of the preceding provisions of this section shall—
  - (a) be in the prescribed form and shall include any prescribed matters; and
  - (b) state that any person may make representations in writing to the [<sup>F77</sup>appropriate agency] with respect to the application at any time before the end of a period specified in the notice.
- (5) The period referred to in subsection (4)(b) above—
  - (a) begins on the date the notice referred to in subsection (1) above is first published as mentioned there; and
  - (b) shall not end before the end of the period of twenty-eight days beginning with that date.
- (6) The Secretary of State may make regulations providing for—
  - (a) the requirements of subsection (2) above, or of both subsections (1) and (2) above, not to apply in prescribed cases;
  - (b) notices of applications to exclude prescribed classes of information, either generally or as respects prescribed classes of application.
- (7) In this section, “proposed point of abstraction or impounding”, in relation to an application for a licence referred to in subsection (1) above, means a place where a licence, if granted in accordance with the application, would authorise—
  - (a) water to be abstracted; or



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- (b) the flow of inland waters to be obstructed or impeded by means of impounding works,  
(as the case may be).

(8) This section is subject to section 37A below.]

#### Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F87** S. 37 substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 14(1)**, 105(3); S.I. 2006/984, art. 2(i) (with Sch. paras. 12)

#### Modifications etc. (not altering text)

- C46** S. 37(1)(2) excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), **Sch. 2 para. 3**
- C47** S. 37(1)(2) applied (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), **Sch. 2 para. 2**
- C48** S. 37(1)(2) excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), 7

### [<sup>F88</sup>37A Power to dispense with publication requirements

The Secretary of State may by regulations make provision for—

- (a) enabling the [<sup>F77</sup>appropriate agency]; or  
(b) him, in the case of applications referred to him in accordance with section 41 below,

to direct or determine that the requirements of subsections (1) and (2) of section 37 above may in any case (except where the [<sup>F77</sup>appropriate agency] is the applicant) be dispensed with, if in that case it appears to the [<sup>F77</sup>appropriate agency] (or, as the case may be, the Secretary of State) to be appropriate to do so.]

#### Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F88** S. 37A inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 14(2)**, 105(3); S.I. 2006/984, art. 2(i) (with Sch. paras. 1, 2)

### *Consideration of licence applications*

## 38 General consideration of applications.

- (1) The [<sup>F77</sup>appropriate agency] shall not determine any application for a licence under this Chapter before the end of the period specified [<sup>F89</sup>in the notice referred to in section 37(4)(b)] above.

[<sup>F90</sup>(1A) An application shall be determined in two stages in accordance with subsections (1B) and (1C) below if it is an application for a full licence or a transfer licence which, if granted—

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- (a) would take effect immediately after the expiry of an existing licence of the same type (the “existing licence”) and be held by the same person as the holder of that licence; but
  - (b) would in any other respect be different from the existing licence in a way which, if the existing licence were to continue without expiring, would require an application to be made under section 51(2) below for a variation of the licence.
- (1B) So far as the application relates to any such difference as is mentioned in subsection (1A)(b) above, it shall first be treated for determination purposes as if it were an application for a variation under section 51(2) below (but as if the existing licence were to continue without expiring).
- (1C) If the result of that would have been the grant of the application for variation of the licence, the application referred to in subsection (1) above shall be treated as one for a licence with that variation, and its determination concluded accordingly; and otherwise its determination shall be concluded as if it were an application for a licence with no such variation.]
- (2) Subject to the following provisions of this Chapter, on any application to the [F77 appropriate agency] for a licence under this Chapter, the [F77 appropriate agency]—
- (a) may grant a licence containing such provisions as the [F77 appropriate agency] considers appropriate; or
  - (b) if, having regard to the provisions of this Chapter, the [F77 appropriate agency] considers it necessary or expedient to do so, may refuse to grant a licence.
- (3) Without prejudice to section 39(1) below, the [F77 appropriate agency], in dealing with any application for a licence under this Chapter, shall have regard to [F91 all the relevant circumstances, including any duty imposed by or under any enactment on bodies having functions in relation to inland waters (for example, navigation authorities and internal drainage boards), and shall have regard in particular to]—
- (a) any representations in writing relating to the application which are received by the [F77 appropriate agency] before the end of the period mentioned in subsection (1) above; and
  - (b) the requirements of the applicant, in so far as they appear to the [F77 appropriate agency] to be reasonable requirements.
- [F92 and may have regard to any failure on the part of the applicant to make an application under section 40 of the Water Industry Act 1991 pursuant to a proposal made by the [F77 appropriate agency] under section 20C above.]
- [F93(4) Subsection (1) above, and paragraph (a) of subsection (3) above, do not apply if in relation to the application in question the requirements of section 37(1) above do not apply by virtue of section 37(6)(a) above or have been dispensed with by virtue of section 37A above.]

#### Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 270\(g\)](#) (with Sch. 7)
- F89** Words in s. 38(1) substituted (1.4.2006) by [Water Act 2003 \(c. 37\), ss. 14\(3\)\(a\)\(i\), 105\(3\); S.I. 2006/984, art. 2\(i\)](#) (with Sch. paras. 1, 2)
- F90** S. 38(1A)-(1C) inserted (1.4.2004) by [Water Act 2003 \(c. 37\), ss. 15\(2\), 105\(3\); S.I. 2004/641, art. 3\(d\)](#) (with Sch. 3 paras. 2, 7)

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- F91** Words in s. 38(3) inserted (1.4.2004) by Water Act 2003 (c. 37), **ss. 15(3)**, 105(3); S.I. 2004/641, art. 3(d) (with Sch. 3 paras. 2, 7)
- F92** Words in s. 38(3) inserted (1.10.2004) by Water Act 2003 (c. 37), **ss. 31(2)**, 105(3); S.I. 2004/2528, art. 2(c) (with Sch. para. 8)
- F93** S. 38(4) added (1.4.2006) by Water Act 2003 (c. 37), **ss. 14(3)(a)(ii)**, 105(3); S.I. 2006/984, art. 2(i) (with Sch. paras. 1, 2)

**Modifications etc. (not altering text)**

- C49** S. 38 applied (with modifications) (1.4.2006) by Water Resources (Abstraction and Impounding) Regulations 2006 (S.I. 2006/641), reg. 1(2), **Sch. 2 para. 8(3)**

**39 Obligation to have regard to existing rights and privileges.**

- (1) [<sup>F94</sup>Subject to subsection (1A) below,] the [<sup>F77</sup>appropriate agency] shall not, except with the consent of the person entitled to the rights, grant a licence so authorising—
  - (a) the abstraction of water; or
  - (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,as to derogate from any rights which, at the time when the application is determined by the [<sup>F77</sup>appropriate agency], are protected rights for the purposes of this Chapter.

[<sup>F95</sup>(1A) Subsection (1) above does not apply when—

- (a) the application to be determined is one which does not fall within subsection (1A) of section 38 above only because paragraph (b) of that subsection is not satisfied; or
- (b) the determination of an application is being concluded in accordance with subsection (1C) of that section.]

- (2) In a case where an application for a licence under this Chapter relates to abstraction from underground strata, the [<sup>F77</sup>appropriate agency], in dealing with the application, shall have regard to the requirements of existing lawful uses of water abstracted from those strata, whether for agriculture, industry, water supply or other purposes.

<sup>F96</sup>(3) .....

- (4) Any reference in this Chapter, in relation to the abstraction of water or obstructing or impeding the flow of any inland waters by means of impounding works, to derogating from a right which is a protected right for the purposes of this Chapter is a reference to, as the case may be—

- (a) abstracting water; or
- (b) so obstructing or impeding the flow of any such waters,

in such a way, or to such an extent, as to prevent the person entitled to that right from abstracting water to the extent mentioned in [<sup>F97</sup>(as the case may be) section 39A(2) or (7), 48(1) or 59C(10) below or section 102(3) of the Water Act 2003, or in a provision made in an order by virtue of section 10(5)(b) of that Act, in each case subject to any limitations mentioned there].

- (5) For the purposes of subsection (2) above the [<sup>F77</sup>appropriate agency] shall be entitled (but shall not be bound) to treat as lawful any existing use of water from underground strata unless—

- (a) by a decision given in any legal proceedings, it has been held to be unlawful; and

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- (b) that decision has not been quashed or reversed.

#### Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 270\(g\)](#) (with [Sch. 7](#))
- F94** Words in s. 39(1) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 16\(2\)](#), 105(3); S.I. 2004/641, [art. 3\(e\)](#) (with [Sch. 3 para. 7](#))
- F95** S. 39(1A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 16\(3\)](#), 105(3); S.I. 2004/641, [art. 3\(e\)](#) (with [Sch. 3 para. 7](#))
- F96** S. 39(3) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 16\(4\)](#), 105(3), [Sch. 9 Pt. 1](#); S.I. 2005/968, [art. 2\(c\)\(n\)](#)
- F97** Words in s. 39(4) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 16\(5\)](#), 105(3); S.I. 2005/968, [art. 2\(c\)](#)

#### Modifications etc. (not altering text)

- C50** S. 39 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), [reg. 1\(2\)](#), [Sch. 2 para. 8\(4\)](#)

### <sup>F98</sup>39A Protected rights for the purposes of this Chapter

- (1) For the purposes of this Chapter, a right is a protected right if—
- (a) it is such a right as a person who is the holder of a full licence is taken to have by virtue of section 48(1) below;
  - (b) it is such a right as a person is taken to have by virtue of subsection (2) below;
  - (c) it is such a right as a person continues to be taken to have by virtue of subsection (7) below;
  - (d) it is such a right as a person is taken to have by virtue of subsection (10) of section 59C below;
  - (e) it is such a right as a person continues to be taken to have by virtue of a provision made under subsection (5)(b) of section 10 of the Water Act 2003 in an order made under that section; or
  - (f) it is such a right as a person continues to be taken to have by virtue of section 102(3) of that Act.
- (2) A person who is in a position to carry out an abstraction of a quantity of water which—
- (a) by virtue of section 27(1) above is not subject to the restriction on abstraction; and
  - (b) also falls within subsection (4) or (5) below,
- shall be taken, for the purposes of this Chapter, to have a right to do so in respect of the maximum quantity mentioned in subsection (3) below.
- (3) The maximum quantity is the lower of the following—
- (a) twenty cubic metres;
  - (b) if, by virtue of an order under section 27A(1) above, section 27(1) above has, or has ever had, effect in relation to the source of supply and point of abstraction in question as if it referred to a quantity lower than twenty cubic metres, that lower quantity (or, if more than one, the lowest of them).

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- (4) An abstraction falls within this subsection if it is an abstraction from inland waters carried out by or on behalf of an occupier of land contiguous to those waters at the place where the abstraction is effected (“contiguous land”), and—
- (a) the water is abstracted for use on a holding consisting of the contiguous land with or without other land held with that land; and
  - (b) it is abstracted for use on that holding for either or both of the following purposes—
    - (i) the domestic purposes of the occupier’s household;
    - (ii) agricultural purposes other than spray irrigation.
- (5) An abstraction falls within this subsection if it is an abstraction from underground strata and the water is abstracted by or on behalf of an individual as a supply of water for the domestic purposes of his household.
- (6) Subsection (2) above shall not apply to a person in respect of an abstraction which that person is, or was at any time, taken to have a right to carry out by virtue of any provision mentioned in paragraph (a), (c), (d), (e) or (f) of subsection (1) above.
- (7) Subject to subsection (8) below, a person who was the holder of a full licence which has ceased to have effect (or has ceased in part to have effect) by virtue of—
- (a) any provision made by virtue of section 27A(5) above in an order made under section 27A(1) above; or
  - (b) any provision made by virtue of section 33A(5) above in regulations made under section 33A above,
- and who was taken in consequence of that licence (or that part of the licence) to have a right to abstract water by virtue of section 48(1) below shall continue to be taken to have that right for the purposes of this Chapter.
- (8) For the purposes of this Chapter, the person who was the holder of the licence in question (“the old licence”) shall cease to continue to be taken to have a right, by virtue of subsection (7) above, to abstract water if—
- (a) during a period mentioned in subsection (9) below he does not carry out any such abstraction as would have been authorised by the old licence if it had still been in force; or
  - (b) following a further order under section 27A(1) above or further regulations under section 33A above, he is granted another full licence in respect of abstraction from the same point as that authorised by the old licence.
- (9) The period referred to in subsection (8)(a) above is—
- (a) four years; or
  - (b) if the abstractions authorised under the old licence were abstractions planned to be carried out at intervals of more than four years, or abstractions for emergency purposes only, such longer period as the [F77 appropriate agency] may determine on the application of the holder of the old licence.
- (10) In subsections (8) and (9) above, references to the old licence, in the case of a licence which ceased to have effect only to the extent specified in the order or regulations referred to in subsection (7) above, are to the part of the licence which ceased to have effect.
- (11) Any reference in this Chapter to the person entitled to a protected right shall be construed in accordance with this section.

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- (12) This section is subject to any provision made by virtue of subsection (3) of section 39B below, and to subsections (4) and (5) of that section.]

#### Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F98** S. 39A inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 17(1), 105(3); S.I. 2005/968, art. 2(d) (with Sch. 1 para. 2)

### [<sup>F99</sup>39B Register of certain protected rights

- (1) The Secretary of State may by regulations make provision for and in connection with the establishment, and for the keeping and maintenance by the [<sup>F77</sup>appropriate agency], of one or more registers of protected rights which arise otherwise than by virtue of a licence under this Chapter to abstract water.
- (2) The regulations may, in particular, provide for—
  - (a) a register to relate to a prescribed geographical area, or for different sections of a register to relate to different geographical areas (whether prescribed or not);
  - (b) the inclusion of protected rights which arise other than by virtue of any provision of this Act;
  - (c) the form and contents of the register, and its inspection by members of the public;
  - (d) the procedure for applying for a protected right to be included in the register, including any information which is to accompany the application;
  - (e) cases in which it is the duty of the [<sup>F77</sup>appropriate agency] to include a protected right in the register without an application for inclusion having been made.
- (3) The Secretary of State may by order designate any geographical area in respect of which a register, or a section of a register, relates as an area of compulsory registration.
- (4) If he does so, a protected right in that area which is not registered shall not have effect as a protected right for any purpose of this Act (other than that of registering it) for so long as it is not registered.
- (5) Subsection (4) above does not apply in relation to any protected right until after the expiry of the period of two years beginning with the date on which the order under subsection (3) above was made, or such longer period as may be specified in the order.
- (6) An order under subsection (3) above may be made only on the application of the [<sup>F77</sup>appropriate agency]; but the Secretary of State may direct the [<sup>F77</sup>appropriate agency] to make such an application.
- (7) Schedule 6 to this Act shall have effect with respect to applications for orders under subsection (3) above and with respect to the making of such orders.
- (8) The power to make orders under this section shall be exercisable by statutory instrument; and a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

(9) Paragraphs (d) to (f) of section 219(2) below apply in relation to orders under this section as they apply to regulations made under this Act.]

#### Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F99** S. 39B inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 18, 105(3)**; S.I. 2004/641, art. 3(f) (with Sch. 3 paras. 3, 7)

#### 40 Obligation to take river flow etc. into account.

- (1) Without prejudice to sections 38(3) and 39(1) above, subsection (2) or, as the case may be, subsection (3) below shall apply where any application for a licence under this Chapter relates to abstraction from any inland waters or to obstructing or impeding the flow of any inland waters by means of impounding works.
- (2) If, in the case of such an application as is mentioned in subsection (1) above, the application is made at a time when no minimum acceptable flow for the inland waters in question has been determined under Chapter I of this Part, the [<sup>F77</sup>appropriate agency], in dealing with the application, shall have regard to the considerations by reference to which, in accordance with section 21(4) and (5) above, a minimum acceptable flow for those waters would fall to be determined.
- (3) If, in the case of such an application as is mentioned in subsection (1) above, the application is made at a time after a minimum acceptable flow for the waters in question has been determined under Chapter I of this Part, the [<sup>F77</sup>appropriate agency], in dealing with the application, shall have regard to the need to secure or, as the case may be, secure in relation to the different times or periods for which the flow is determined—
- (a) that the flow at any control point will not be reduced below the minimum acceptable flow at that point; or
- (b) if it is already less than that minimum acceptable flow, that the flow at any control point will not be further reduced below the minimum acceptable flow at that point.
- (4) Without prejudice to sections 38(3) and 39(1) above, where—
- (a) an application for a licence under this Chapter relates to abstraction from underground strata; and
- (b) it appears to the [<sup>F77</sup>appropriate agency] that the proposed abstraction is likely to affect the flow, level or volume of any inland waters which are [<sup>F100</sup>not discrete waters],
- subsection (2) or, as the case may be, subsection (3) above shall apply as if the application related to abstraction from those waters.

#### Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F100** Words in s. 40(4)(b) substituted (1.1.2018) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 3**; S.I. 2017/1043, art. 2(g)

*Status: Point in time view as at 17/09/2018.*

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#### **Modifications etc. (not altering text)**

**C51** S. 40(1) applied (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), **Sch. 2 para. 8(5)**

### *Call-in of applications*

#### **41 Secretary of State’s power to call in applications**

- (1) The Secretary of State may give directions to the [<sup>F77</sup>appropriate agency] requiring applications for licences under this Chapter to be referred to him, instead of being dealt with by the [<sup>F77</sup>appropriate agency].
- (2) A direction under this section—
  - (a) may relate either to a particular application or to applications of a class specified in the direction; and
  - (b) may except from the operation of the direction such classes of applications as may be specified in the direction in such circumstances as may be so specified.
- [<sup>F101</sup>(3) An application may not be referred to the Secretary of State under this section—
  - (a) if in relation to the application the [<sup>F77</sup>appropriate agency] is still considering whether to make any such decision as is referred to in subsection (1) of section 36A above, or if it has made such a decision but has not yet served the notice referred to in subsection (3) of that section; or
  - (b) where the [<sup>F77</sup>appropriate agency] has served a notice on the applicant under subsection (3) of that section, until the period for appealing under that section has expired or (if the applicant appeals) the appeal has been determined.]

#### **Textual Amendments**

**F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)

**F101** S. 41(3) added (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 13(2), 105(3); S.I. 2006/984, art. 2(h) (with Sch. para. 7)

#### **Modifications etc. (not altering text)**

**C52** S. 41 applied (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), **Sch. 2 para. 8(5)**

#### **42 Consideration of called-in applications.**

- (1) Subject to the following provisions of this section and to section 46 below, the Secretary of State, on considering a called-in application—
  - (a) may determine that a licence shall be granted containing such provisions as he considers appropriate; or
  - (b) if, having regard to the provisions of this Act, he considers it necessary or expedient to do so, may determine that no licence shall be granted.
- (2) Before determining a called-in application, the Secretary of State may, if he thinks fit—
  - (a) cause a local inquiry to be held; or



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- (b) afford to the applicant and the [F77 appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;
- and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant or the [F77 appropriate agency] to be heard with respect to the application.
- (3) The provisions of sections 37, 38(1) and (3), 39(2) and 40 above shall apply in relation to any called-in application as if—
- (a) any reference in those provisions to the [F77 appropriate agency], except the references in sections [F102 37 ] and 38(3)(a), were a reference to the Secretary of State; and
- (b) any reference to section 39(1) above were a reference to subsection (4) below.
- (4) [F103 Subject to subsection (4A) below,] in determining any called-in application and, in particular, in determining what (if any) direction to give under subsection (5) below, the Secretary of State shall consider whether any such direction would require the grant of a licence which would so authorise—
- (a) the abstraction of water; or
- (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
- as to derogate from rights which, at the time when the direction in question is given, are protected rights for the purposes of this Chapter.
- [F104 (4A) Subsection (1A) of section 39 above applies in relation to subsection (4) above as it applies in relation to section 39(1) above.]
- (5) Where the decision of the Secretary of State on a called-in application is that a licence is to be granted, the decision shall include a direction to the [F77 appropriate agency] to grant a licence containing such provisions as may be specified in the direction.
- (6) The decision of the Secretary of State on any called-in application shall be final.
- (7) In this section “called-in application” means an application referred to the Secretary of State in accordance with directions under section 41 above.

#### Textual Amendments

- F77** Words in ss. 33A–45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F102** Word in s. 42(3)(a) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 14(3)(b)**, 105(3); S.I. 2006/984, art. 2(i) (with Sch. paras. 1, 2)
- F103** Words in s. 42(4) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(6)(a)**, 105(3); S.I. 2004/641, art. 3(e) (with Sch. 3 para. 7)
- F104** S. 42(4A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(6)(b)**, 105(3); S.I. 2004/641, art. 3(e) (with Sch. 3 para. 7)

#### Modifications etc. (not altering text)

- C53** S. 42 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), reg. 1(2), **Sch. 2 para. 7**

*Status: Point in time view as at 17/09/2018.*

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*Appeals with respect to decisions on licence applications*

### 43 Appeals to the Secretary of State.

- (1) Where an application has been made to the [<sup>F77</sup>appropriate agency] for a licence under this Chapter, the applicant may by notice appeal to the Secretary of State if—
- (a) the applicant is dissatisfied with the decision of the [<sup>F77</sup>appropriate agency] on the application; or
  - (b) the [<sup>F77</sup>appropriate agency] fails within the period specified in subsection (2) below to give to the applicant either—
    - (i) notice of the [<sup>F77</sup>appropriate agency's] decision on the application; or
    - (ii) notice that the application has been referred to the Secretary of State in accordance with any direction under section 41 above.
- [<sup>F105</sup>(1A) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).]
- (2) The period mentioned in subsection (1)(b) above is—
- (a) except in a case falling within paragraph (b) below, such period as may be prescribed; and
  - (b) where an extended period is at any time agreed in writing between the applicant and the [<sup>F77</sup>appropriate agency], the extended period.
- (3) A notice of appeal under this section shall be served—
- (a) in such manner as may be prescribed; and
  - (b) within such period as may be prescribed, being a period of not less than twenty-eight days from, as the case may be—
    - (i) the date on which the decision to which it relates was notified to the applicant; or
    - (ii) the end of the period which, by virtue of subsection (2) above, is applicable for the purposes of subsection (1)(b) above.
- (4) Where a notice is served under this section in respect of any application, the applicant shall, within the period prescribed for the purposes of subsection (3)(b) above, serve a copy of the notice on the [<sup>F77</sup>appropriate agency].
- (5) Where any representations in writing with respect to an application were made within the period specified [<sup>F106</sup>in any such notice as is referred to in section 37(4)(b)] above, the Secretary of State shall, before determining an appeal under this section in respect of the application, require the [<sup>F77</sup>appropriate agency] to serve a copy of the notice of appeal on each of the persons who made those representations.

#### Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F105** S. 43(1A) inserted (1.4.1996) by [1995 c. 25](#), s. 120(1), **Sch. 22 para. 134** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**
- F106** Words in s. 43(5) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 14(3)(c)**, 105(3); [S.I. 2006/984](#), **art. 2(i)** (with Sch. paras. 1, 2)

*Status: Point in time view as at 17/09/2018.*

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**Modifications etc. (not altering text)**

- C54** S. 43: power to delegate functions conferred (1.4.1996) by 1995 c. 25, s. 114(2)(v) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- C55** S. 43 restricted (1.3.2012) by The Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003 (S.I. 2003/164), regs. 1(1), 8(4)
- C56** S. 43(1)(a) modified (1.4.2005) by The Water Act 2003 (Commencement No. 4, Transitional Provisions and Savings) Order 2005 (S.I. 2005/968), art. 4(1)(3), Sch. 1 para. 5(5)

**44 Determination of appeals.**

- (1) Subject to the following provisions of this Chapter, where an appeal is brought under section 43 above, the Secretary of State—
- (a) may allow or dismiss the appeal or reverse or vary any part of the decision of the [F77 appropriate agency], whether the appeal relates to that part of the decision or not; and
  - (b) may deal with the application as if it had been made to him in the first instance; and for the purposes of this section an appeal by virtue of section 43(1)(b) above shall be taken to be an appeal against a refusal of the application.
- (2) Before determining an appeal under section 43 above, the Secretary of State may, if he thinks fit—
- (a) cause a local inquiry to be held; or
  - (b) afford to the applicant and the [F77 appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;
- and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant or the [F77 appropriate agency] to be heard with respect to the appeal.
- (3) The Secretary of State, in determining an appeal under section 43 above, shall take into account—
- (a) any further representations in writing received by him, within the prescribed period, from the persons mentioned in section 43(5) above; and
  - (b) the requirements of the applicant, in so far as they appear to the Secretary of State to be reasonable requirements.
- (4) [F107 Subject to subsection (4A) below,] in determining any appeal under section 43 above and, in particular, in determining what (if any) direction to give under subsection (6) below, the Secretary of State shall consider whether any such direction would require such a grant or variation of a licence as would so authorise—
- (a) the abstraction of water; or
  - (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
- as to derogate from rights which, at the time when the direction in question is given, are protected rights for the purposes of this Chapter.

[F108(4A) Subsection (1A) of section 39 above applies in relation to subsection (4) above as it applies in relation to section 39(1) above.]

- (5) The provisions of sections 39(2) and 40 above shall apply in relation to any appeal under section 43 above as if—

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- (a) any reference in those provisions to the [<sup>F77</sup>appropriate agency], were a reference to the Secretary of State; and
  - (b) the references to sections 38(3) and 39(1) above were references to subsections (3) and (4) above.
- (6) Where the decision on an appeal under section 43 above is that a licence is to be granted or to be varied or revoked, the decision shall include a direction to the [<sup>F77</sup>appropriate agency], as the case may be—
- (a) to grant a licence containing such provisions as may be specified in the direction;
  - (b) to vary the licence so as to contain such provisions as may be so specified; or
  - (c) to revoke the licence.
- (7) The decision of the Secretary of State on any appeal under section 43 above shall be final.

#### Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(g)** (with Sch. 7)
- F107** Words in s. 44(4) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(7)(a)**, 105(3); S.I. 2004/641, art. 3(e) (with Sch. 3 para. 7)
- F108** S. 44(4A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(7)(b)**, 105(3); S.I. 2004/641, art. 3(e) (with Sch. 3 para. 7)

#### 45 Regulations with respect to appeals.

- (1) The Secretary of State may by regulations make provision as to the manner in which appeals against decisions [<sup>F109</sup>of the [<sup>F77</sup>appropriate agency] under section 36A above or ] on applications for the grant, revocation or variation of licences under this Chapter are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such appeals or decisions on any such appeals.
- (2) Without prejudice to the generality of subsection (1) above, provision shall be made by regulations under this section for securing that, in prescribed circumstances (being circumstances in which it appears to the Secretary of State that applications for licences under this Chapter would be of special concern to National Park <sup>F110</sup> . . . authorities)—
- (a) notice of any appeal against the decision on such an application, will be served on any National Park <sup>F110</sup> . . . authority who made representations falling within paragraph (b) of section 34(3) above; and
  - (b) the Secretary of State, in determining the appeal, will take account of any further representations made by such an authority within such period and in such manner as may be prescribed.
- [<sup>F111</sup>(2A) Subsection (2) above does not apply in relation to appeals against decisions of the [<sup>F77</sup>appropriate agency] under section 36A above.]
- (3) Subsections (4) <sup>F110</sup> . . . of section 34 above shall apply for the purposes of this section as they apply for the purposes of that section.

*Status: Point in time view as at 17/09/2018.*

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### Textual Amendments

- F77** Words in ss. 33A-45 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 270\(g\)](#) (with [Sch. 7](#))
- F109** Words in s. 45(1) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), [ss. 13\(3\)\(a\)](#), 105(3); S.I. 2006/984, [art. 2\(h\)](#) (with [Sch. para. 7](#))
- F110** Words in s. 45 repealed (1.4.1997) by [1995 c. 25](#), s. 120(3), [Sch. 24](#) (with [ss. 7\(6\)](#), 115, 117); S.I. 1996/2560, [art. 2](#), [Sch.](#)
- F111** S. 45(2A) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), [ss. 13\(3\)\(b\)](#), 105(3); S.I. 2006/984, [art. 2\(h\)](#) (with [Sch. para. 7](#))

### *Form, contents and effect of licences*

## 46 Form and contents of licences.

- (1) The Secretary of State may by regulations make provision as to the form of licences under this Chapter or of any class of such licences; but any regulations under this subsection shall have effect subject to the following provisions of this section and to any other express provision contained in, or having effect by virtue of, any other enactment contained in this Chapter.
- (2) [<sup>F112</sup>Every full licence under this Chapter shall, and any other licence under this Chapter to abstract water may, make— ]
- (a) provision as to the quantity of water authorised to be abstracted in pursuance of the licence from the source of supply to which the licence relates during a period or periods specified in the licence, including provision as to the way in which that quantity is to be measured or assessed for the purposes of this Chapter; and
  - (b) provision for determining, by measurement or assessment, what quantity of water is to be taken to have been abstracted during any such period by the holder of the licence from the source of supply to which the licence relates.
- [<sup>F113</sup>(2A) For the purposes of section 61(4A) below—
- (a) every full licence under this Chapter which is for a term exceeding twelve years shall; and
  - (b) any transfer licence under this Chapter which is for a term exceeding twelve years may,
- specify a minimum value for the quantity referred to in subsection (2)(a) above.]
- (3) Every licence under this Chapter to abstract water shall indicate the means by which water is authorised to be abstracted in pursuance of the licence, by reference either to specified works, machinery or apparatus or to works, machinery or apparatus fulfilling specified requirements.
- [<sup>F114</sup>(4) Every licence under this Chapter to abstract water shall also specify the purposes for which water abstracted in pursuance of the licence is to be used.
- (5) Every licence under this Chapter to abstract water shall state—
- (a) the date on which it takes effect; and
  - (b) the date on which it expires.

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- (5A) Every licence under this Chapter to obstruct or impede any inland waters shall remain in force until revoked.]
- (6) Different provision may be made by the same licence with respect to any one or more of the following matters, that is to say—
- (a) the abstraction of water during different periods;
  - (b) the abstraction of water from the same source of supply but at different points or by different means;
  - (c) the abstraction of water for use for different purposes;
- and any such provision as is mentioned in subsection (2) above may be made separately in relation to each of the matters for which (in accordance with this subsection) different provision is made in the licence.
- (7) Nothing in subsection (6) above shall be construed as preventing two or more licences from being granted to the same person to be held concurrently in respect of the same source of supply, if the licences authorise the abstraction of water at different points [F115, by different means or for different purposes ] .

#### Textual Amendments

- F112** Words in s. 46(2) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 19(2)**, 105(3); S.I. 2006/984, art. 2(j) (with [Sch. para. 1](#))
- F113** S. 46(2A) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 19(3)**, 105(3); S.I. 2006/984, art. 2(j) (with [Sch. para. 1](#))
- F114** S. 46(4)(5)(5A) substituted for s. 46(4)(5) (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 19(4)**, 105(3); S.I. 2004/641, art. 3(g) (with [Sch. 3 para. 7](#))
- F115** Words in s. 46(7) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 19(5)**, 105(3); S.I. 2006/984, art. 2(j) (with [Sch. para. 1](#))

#### [F116] 46A Limited extension of abstraction licence validity

- (1) If the condition in subsection (2) below is met, a full licence or a transfer licence whose term exceeded twelve months but whose expiry date (“the expiry date”) has passed shall be treated for all the purposes of this Act as not expiring until the date mentioned in subsection (4) below.
- (2) The condition is that the [F117 appropriate agency] receives, not later than the beginning of the period of three months ending on the expiry date (or such later date before the expiry date as the [F117 appropriate agency] agrees), a valid application for a new licence—
  - (a) for abstraction from the same point as the abstraction licensed by the expiring licence;
  - (b) whose holder would be the same as the holder of the expiring licence; and
  - (c) which would take effect immediately after the expiry date.
- (3) For the purposes of subsection (2) above, a “valid” application is one which complies with all the requirements of this Act in relation to the making of applications for licences of the type in question.
- (4) The date referred to in subsection (1) above is whichever is the later of—

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- (a) if a new licence is granted (whether or not on the terms applied for), the date on which it takes effect;
- (b) otherwise—
  - (i) except where the Secretary of State calls in an application under section 41 above, the expiry of the period for appealing under section 43 above, or if an appeal is brought, the date of its withdrawal; or
  - (ii) where the Secretary of State decides (under section 42 or 44 above) that no licence is to be granted, the date on which that decision is notified to the applicant.]

#### Textual Amendments

**F116** S. 46A inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 20, 105(3)**; S.I. 2004/641, art. 3(g) (with [Sch. 3 paras. 2, 7](#))

**F117** Words in s. 46A(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(h)** (with [Sch. 7](#))

#### Modifications etc. (not altering text)

**C57** S. 46A applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), 17

### 47 Holders of licence.

(1) Every licence under this Chapter <sup>F118</sup>... shall specify the person to whom the licence is granted.

[<sup>F119</sup>(2) The person to whom a licence under this Chapter is granted to abstract water or to obstruct or impede any inland waters is the holder of the licence for the purposes of this Act, subject to sections 59A to 59C and 67 below.]

<sup>F120</sup>(3) .....

#### Textual Amendments

**F118** Words in s. 47(1) repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 19(6), 105(3)**, **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(j) (with [Sch. para. 1](#))

**F119** S. 47(2) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 23(2)(a), 105(3)**; S.I. 2006/984, art. 2(m) (with [Sch. para. 3](#))

**F120** S. 47(3) repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 23(2)(b), 105(3)**, **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(m) (with [Sch. para. 3](#))

### 48 General effect of licence.

(1) For the purposes of this Chapter a person who is for the time being the holder of a licence under this Chapter to abstract water shall be taken to have a right to abstract water to the extent authorised by the licence and in accordance with the provisions contained in it.

(2) In any action brought against a person in respect of the abstraction of water from a source of supply [<sup>F121</sup>(other than an abstraction in respect of which a claim could be

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brought under section 48A below, in which case that section shall apply)], it shall be a defence, subject to paragraph 2 of Schedule 7 to this Act, for him to prove—

- (a) that the water was abstracted in pursuance of a licence under this Chapter; and
  - (b) that the provisions of the licence were complied with.
- (3) In any action brought against a person in respect of any obstruction or impeding of the flow of any inland waters at any point by means of impounding works, it shall be a defence for him to prove—
- (a) that the flow was so obstructed or impeded in pursuance of a licence under this Chapter;
  - (b) that the obstructing or impeding was in the manner specified in that licence and to an extent not exceeding the extent so specified; and
  - (c) that the other requirements of the licence (if any) were complied with.
- (4) Nothing in subsection (2) or (3) above shall exonerate a person from any action for negligence or breach of contract.

#### **Textual Amendments**

**F121** Words in s. 48(2) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 24(2), 105(3)** (with s. 24(3)(b)); [S.I. 2004/641](#), art. 5 (with [Sch. 3 paras. 4, 7](#))

#### **Modifications etc. (not altering text)**

**C58** S. 48(1) modified (1.4.2005) by [The Water Act 2003 \(Commencement No. 4, Transitional Provisions and Savings\) Order 2005 \(S.I. 2005/968\)](#), art. 4(1)(3), [Sch. 1 paras. 7\(10\), 8\(3\)](#)

### **[<sup>F122</sup>48A Civil remedies for loss or damage due to water abstraction**

- (1) Subject to subsection (7) below and to section 79 (including that section as applied by section 79A(9)) below, a person who abstracts water from any inland waters or underground strata (an “abstractor”) shall not by that abstraction cause loss or damage to another person.
- (2) A person who suffers such loss or damage (a “relevant person”) may bring a claim against the abstractor.
- (3) Such a claim shall be treated as one in tort for breach of statutory duty.
- (4) In proceedings in respect of a claim under this section, the court may not grant an injunction against the abstractor if that would risk interrupting the supply of water to the public, or would put public health or safety at risk.
- (5) Except as provided in this section, no claim may be made in civil proceedings by a person (whether or not a relevant person) against an abstractor in respect of loss or damage caused by his abstraction of water.
- (6) Nothing in this section prevents or affects a claim for negligence or breach of contract.
- (7) This section does not apply, and no claim may be brought under this section, where the loss or damage is caused by an abstractor acting in pursuance of a licence under this Chapter and is loss or damage—



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- (a) in respect of which a person is entitled to bring a claim under section 60 below (or would be so entitled if there were a breach of the duty referred to in that section);
  - (b) in respect of which a person would have been entitled to bring a claim under section 60 below but for an express provision (including, for example, section 39(1A) above and section 59C(6) below) disapplying that duty; or
  - (c) constituting grounds on which a person is entitled to apply to the Secretary of State under section 55 below (or would be so entitled but for subsection (2) of that section) for the revocation or variation of that licence,
- but without prejudice to the application of section 48 above.]

#### Textual Amendments

**F122** S. 48A inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 24(1)**, 105(3) (with s. 24(3)(a)); S.I. 2004/641, art. 5 (with Sch. 3 paras. 4, 7)

#### Modifications etc. (not altering text)

- C59** S. 48A(1) excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **s. 46(1)**
- C60** S. 48A(1) excluded (21.8.2013) by [The Croyley Rail Link Order 2013 \(S.I. 2013/1967\)](#), arts. 1, **40(2)**
- C61** S. 48A(1) excluded (15.12.2014) by [The London Underground \(Northern Line Extension\) Order 2014 \(S.I. 2014/3102\)](#), arts. 1, **17(2)** (with Sch. 8 para. 45)
- C62** S. 48A(1) excluded (12.1.2016) by [The London Underground \(Bank Station Capacity Upgrade\) Order 2015 \(S.I. 2015/2044\)](#), arts. 1, **36(2)**
- C63** S. 48A(1) excluded (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), **Sch. 21 para. 3(1)**
- C64** S. 48A(1) applied (2.1.2018) by [The Boston Barrier Order 2017 \(S.I. 2017/1329\)](#), arts. 1, **20(5)** (with arts. 55-57, Sch. 8 para. 13)
- C65** S. 48A(1) excluded (2.1.2018) by [The Boston Barrier Order 2017 \(S.I. 2017/1329\)](#), arts. 1, **20(3)** (with arts. 20(4), 55-57, Sch. 8 para. 13)
- C66** S. 48A(1) excluded (5.9.2017) by [The London Overground \(Barking Riverside Extension\) Order 2017 \(S.I. 2017/830\)](#), arts. 1, **15(2)** (with Sch. 8 para. 20)
- C67** S. 48A(1) applied (5.9.2017) by [The London Overground \(Barking Riverside Extension\) Order 2017 \(S.I. 2017/830\)](#), arts. 1, **15(4)** (with Sch. 8 para. 20)
- C68** S. 48A(5) excluded (22.7.2008) by [Crossrail Act 2008 \(c. 18\)](#), **s. 46(4)**
- C69** S. 48A(5) excluded (21.8.2013) by [The Croyley Rail Link Order 2013 \(S.I. 2013/1967\)](#), arts. 1, **40(5)**
- C70** S. 48A(5) excluded (15.12.2014) by [The London Underground \(Northern Line Extension\) Order 2014 \(S.I. 2014/3102\)](#), arts. 1, **17(5)** (with Sch. 8 para. 45)
- C71** S. 48A(5) restricted (23.2.2017) by [High Speed Rail \(London - West Midlands\) Act 2017 \(c. 7\)](#), s. 70(1), **Sch. 21 para. 3(4)**
- C72** S. 48A(5) excluded (2.1.2018) by [The Boston Barrier Order 2017 \(S.I. 2017/1329\)](#), arts. 1, **20(6)** (with arts. 55-57, Sch. 8 para. 13)
- C73** S. 48A(5) excluded (5.9.2017) by [The London Overground \(Barking Riverside Extension\) Order 2017 \(S.I. 2017/830\)](#), arts. 1, **15(5)** (with Sch. 8 para. 20)

#### *Succession to licences*

**F123** 49 **Succession to licences to abstract where person ceases to occupy the relevant land.**

.....

*Status: Point in time view as at 17/09/2018.*

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**Textual Amendments**

**F123** S. 49 repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 23(4)(5), 105(3), **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(m)(s)(ii) (with Sch. para. 3)

**F124** **50 Succession where person becomes occupier of part of the relevant land.**

.....

**Textual Amendments**

**F124** S. 50 repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 23(4)(5), 105(3), **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(m)(s)(ii) (with Sch. para. 3)

*Modification of licences*

**51 Modification on application of licence holder.**

- (1) The holder of a licence under this Chapter [<sup>F125</sup>to abstract water] may apply to the [<sup>F126</sup>appropriate agency] to revoke the licence and, on any such application, the [<sup>F126</sup>appropriate agency] shall revoke the licence accordingly.
- [<sup>F127</sup>(1A) The holder of a licence under this Chapter to obstruct or impede the flow of inland waters (an “impounding licence”) may apply to the [<sup>F126</sup>appropriate agency] to revoke the licence and, on any such application, the [<sup>F126</sup>appropriate agency] may revoke the licence accordingly.
- (1B) The [<sup>F126</sup>appropriate agency] may require conditions to be met to its satisfaction before revocation of the impounding licence takes effect, and those conditions may in particular include conditions—
- (a) requiring the removal of all or part of the impounding works;
  - (b) as to the restoration of the site of the impounding works to a state which is satisfactory to the [<sup>F126</sup>appropriate agency];
  - (c) relating to the inland waters the flow of which is obstructed or impeded by means of the impounding works.
- (1C) The person making an application under subsection (1A) above (“the applicant”) may by notice appeal to the Secretary of State if—
- (a) he is dissatisfied with the decision of the [<sup>F126</sup>appropriate agency] as to—
    - (i) whether his licence may be revoked; or
    - (ii) any conditions imposed by virtue of subsection (1B) above; or
  - (b) the [<sup>F126</sup>appropriate agency] fails to give notice of its decision to the applicant within the prescribed period or within such extended period as may be agreed in writing between the [<sup>F126</sup>appropriate agency] and the applicant.
- (1D) The Secretary of State may by regulations make provision with respect to—
- (a) the manner in which notices of appeal under subsection (1C) above shall be served;
  - (b) the period within which such notices shall be served;
  - (c) the procedure on any such appeal.

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- (1E) Where an appeal is brought under subsection (1C) above, the Secretary of State may—
- (a) allow or dismiss the appeal or reverse or vary any part of the decision of the [<sup>F126</sup>appropriate agency], whether the appeal relates to that part of the decision or not; and
  - (b) may deal with the application as if it had been made to him in the first place.
- (1F) The decision of the Secretary of State on any appeal under subsection (1C) above shall be final.
- (1G) Subsections (1C) to (1F) above are subject to section 114 of the 1995 Act (delegation or reference of appeals).]
- (2) The holder of a licence under this Chapter may apply to the [<sup>F126</sup>appropriate agency] to vary the licence.
- [<sup>F128</sup>(2A) An application may not be made under subsection (2) above to convert an abstraction licence of one type into an abstraction licence of a different type.]
- (3) Subject to subsection (4) below, the provisions of sections 37 to 44 above shall apply (with the necessary modifications) to applications under subsection (2) above, and to the variation of licences in pursuance of such applications, as they apply to applications for, and the grant of, licences under this Chapter.
- (4) Where the variation proposed in an application under subsection (2) above is limited to reducing the quantity of water authorised to be abstracted in pursuance of the licence during one or more periods—
- (a) sections 37 and 38(1) above shall not apply by virtue of subsection (3) above; and
  - (b) sections 43 and 44 above, as applied by that subsection, shall have effect as if subsection (5) of section 43 and paragraph (a) of section 44(3) were omitted.

#### Textual Amendments

- F125** Words in s. 51(1) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 21(2), 105(3)** (with s. 21(5)); S.I. 2006/984, art. 2(k)
- F126** Words in s. 51 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(i)** (with Sch. 7)
- F127** S. 51(1A)-(1G) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 21(3), 105(3)** (with s. 21(5)); S.I. 2006/984, art. 2(k)
- F128** S. 51(2A) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 4**; S.I. 2006/984, art. 2(s)(i)

#### Modifications etc. (not altering text)

- C74** S. 51 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **18**

## 52 Proposals for modification at instance of the [<sup>F129</sup>appropriate agency] or Secretary of State.

- (1) Where it appears to the [<sup>F129</sup>appropriate agency] that a licence under this Chapter should be revoked or varied, the [<sup>F129</sup>appropriate agency] may formulate proposals for revoking or varying the licence.

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[<sup>F130</sup>(1A) In the case of a licence to obstruct or impede any inland waters, a variation may take the form of a requirement that the impounding works be modified in ways specified in the proposed new provision of the licence.]

(2) Where—

(a) it appears to the Secretary of State (either in consequence of representations made to the Secretary of State or otherwise) that a licence under this Chapter ought to be reviewed; but

(b) no proposals for revoking or varying the licence have been formulated by the [<sup>F129</sup>appropriate agency] under subsection (1) above,

the Secretary of State may, as he may consider appropriate in the circumstances, give the [<sup>F129</sup>appropriate agency] a direction under subsection (3) below.

(3) A direction under this subsection may—

(a) direct the [<sup>F129</sup>appropriate agency] to formulate proposals for revoking the licence in question; or

(b) direct the [<sup>F129</sup>appropriate agency] to formulate proposals for varying that licence in such manner as may be specified in the direction.

(4) Notice in the prescribed form of any proposals formulated under this section with respect to any licence shall—

(a) be served on the holder of the licence; and

[<sup>F131</sup>(b) be published in the prescribed way or (if no way is prescribed) in a way calculated to bring it to the attention of persons likely to be affected if the licence were revoked or varied as proposed.]

(5) If—

(a) a licence with respect to which any proposals are formulated under this section relates to any inland waters; and

(b) the proposals provide for variation of that licence,

a copy of the notice for the purposes of subsection (4) above shall, not later than the date on which it is first published [<sup>F132</sup>as mentioned in subsection (4)(b) above], be served on any navigation authority, harbour authority or conservancy authority having functions in relation to those waters at a place where the licence, if varied in accordance with the proposals, would authorise water to be abstracted or impounded.

[<sup>F133</sup>(6) A notice for the purposes of subsection (4) above shall—

(a) include any prescribed matters; and

(b) state that, before the end of a period specified in the notice—

(i) the holder of the licence may give notice in writing to the [<sup>F129</sup>appropriate agency] objecting to the proposals; and

(ii) any other person may make representations in writing to the [<sup>F129</sup>appropriate agency] with respect to the proposals.]

[<sup>F134</sup>(7) The period referred to in subsection (6)(b) above—

(a) begins on the date the notice referred to in subsection (4) above is first published as mentioned there; and

(b) shall not end before the end of the period of twenty-eight days beginning with that date.]

[<sup>F135</sup>(8) .....

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### Textual Amendments

- F129** Words in s. 52 and heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(i)** (with Sch. 7)
- F130** S. 52(1A) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(2)**, 105(3); S.I. 2006/984, art. 2(1)
- F131** S. 52(4)(b) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(3)**, 105(3); S.I. 2006/984, art. 2(1)
- F132** Words in s. 52(5) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(4)**, 105(3); S.I. 2006/984, art. 2(1)
- F133** S. 52(6) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(5)**, 105(3); S.I. 2006/984, art. 2(1)
- F134** S. 52(7) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(6)**, 105(3); S.I. 2006/984, art. 2(1)
- F135** S. 52(8) repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 22(7)**, 105(3), **Sch. 9 Pt. 1**; S.I. 2006/984, art. 2(1)(s)(ii)

### Modifications etc. (not altering text)

- C75** S. 52 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **19(1)**
- C76** S. 52(4)-(8) applied (with modifications) (1.3.2012) by [The Water Resources \(Environmental Impact Assessment\) \(England and Wales\) Regulations 2003 \(S.I. 2003/164\)](#), regs. 1(1), **14**, 15

## 53 Modification in pursuance of proposals under section 52.

- (1) Subject to the following provisions of this section, where the [<sup>F136</sup>appropriate agency] has formulated any proposals under section 52 above with respect to any licence under this Chapter, it may—
  - (a) if the proposals are for the revocation of the licence, revoke the licence; and
  - (b) if the proposals are proposals for varying the licence, vary the licence in accordance with those proposals or, with the consent of the holder of the licence, in any other way.
- (2) The [<sup>F136</sup>appropriate agency] shall not proceed with any proposals formulated under section 52 above before the end of the period specified, in accordance with subsection (7) of that section, for the purposes in relation to those proposals of subsection (6) of that section.
- (3) If no notice under subsection (4) below is given to the [<sup>F136</sup>appropriate agency] before the end of the period mentioned in subsection (2) above, the [<sup>F136</sup>appropriate agency] may proceed with the proposals.
- (4) If the holder of the licence gives notice to the [<sup>F136</sup>appropriate agency] objecting to the proposals before the end of the period mentioned in subsection (2) above, the [<sup>F136</sup>appropriate agency] shall refer the proposals to the Secretary of State, with a copy of the notice of objection.
- (5) Where the [<sup>F136</sup>appropriate agency] proceeds with any proposals under subsection (3) above and the proposals are proposals for varying the licence, the provisions of sections 38(3), 39(1) and (2) and 40 above shall apply (with the necessary modifications) to any action of the [<sup>F136</sup>appropriate agency] in proceeding with the proposals as they apply to the action of the [<sup>F136</sup>appropriate agency] in dealing with an application for a licence.

*Status: Point in time view as at 17/09/2018.*

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#### Textual Amendments

**F136** Words in ss. 53-57 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(i)** (with Sch. 7)

#### Modifications etc. (not altering text)

**C77** S. 53 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **19(2)**

### 54 Reference of modification proposals to the Secretary of State.

- (1) Where any proposals of the [<sup>F136</sup>appropriate agency] with respect to a licence are referred to the Secretary of State in accordance with subsection (4) of section 53 above, the Secretary of State shall consider—
- (a) the proposals;
  - (b) the objection of the holder of the licence; and
  - (c) any representations in writing relating to the proposals which were received by the [<sup>F136</sup>appropriate agency] before the end of the period mentioned in subsection (2) of that section,

and, subject to subsection (2) below, shall determine (according to whether the proposals are for the revocation or variation of the licence) the question whether the licence should be revoked or the question whether it should be varied as mentioned in subsection (1)(b) of that section.

- (2) Before determining under this section whether a licence should be revoked or varied in a case in which proposals have been formulated under section 52 above, the Secretary of State may, if he thinks fit—
- (a) cause a local inquiry to be held; or
  - (b) afford to the holder of the licence and the [<sup>F136</sup>appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;

and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the holder of the licence or the [<sup>F136</sup>appropriate agency] to be heard with respect to the proposals.

- (3) In determining under this section whether a licence should be varied and, if so, what directions should be given under subsection (5) below, the Secretary of State shall consider whether any such direction would require such a variation of the licence as would so authorise—

- (a) the abstraction of water; or
- (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,

as to derogate from rights which, at the time when the direction is given, are protected rights for the purposes of this Chapter.

- (4) The provisions of sections 39(2) and 40 above shall apply in relation to any proposals referred to the Secretary of State in accordance with section 53(4) above as if in those provisions—

- (a) any reference to the [<sup>F136</sup>appropriate agency] were a reference to the Secretary of State;

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- (b) any reference to the application were a reference to the proposals; and
  - (c) the references to sections 38(3) and 39(1) were references to subsections (1) and (3) above.
- (5) Where the decision of the Secretary of State on a reference in accordance with section 53(4) above is that the licence in question should be revoked or varied, the decision shall include a direction to the [<sup>F136</sup>appropriate agency] to revoke the licence or, as the case may be, to vary it so as to contain such provisions as may be specified in the direction.
- (6) A decision of the Secretary of State under this section with respect to any proposals shall be final.

#### Textual Amendments

**F136** Words in ss. 53-57 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(i\)](#) (with Sch. 7)

#### Modifications etc. (not altering text)

**C78** S. 54 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), [19\(3\)](#)

## 55 Application for modification of licence by owner of fishing rights.

- (1) Subject to the following provisions of this section and to Schedule 7 to this Act, where a licence under this Chapter authorises abstraction from any inland waters in respect of which no minimum acceptable flow has been determined under Chapter I of this Part, any person who is the owner of fishing rights in respect of those inland waters may apply to the Secretary of State for the revocation or variation of the licence.
- (2) No application shall be made under this section in respect of any licence except at a time after the end of the period of one year beginning with the date on which the licence was granted but before a minimum acceptable flow has been determined in relation to the waters in question.
- (3) Any application under this section made by a person as owner of fishing rights in respect of any inland waters shall be made on the grounds that, in his capacity as owner of those rights, he has sustained loss or damage which is directly attributable to the abstraction of water in pursuance of the licence in question and either—
- (a) he is not entitled to a protected right for the purposes of this Chapter in respect of those inland waters; or
  - (b) the loss or damage which he has sustained in his capacity as owner of those rights is not attributable to any such breach of statutory duty as is mentioned in subsection (2) or (3) of section 60 below or is in addition to any loss or damage attributable to any such breach.
- (4) Where an application is made under this section in respect of any licence, the applicant shall serve notice in the prescribed form on the [<sup>F136</sup>appropriate agency] and on the holder of the licence, stating that each of them is entitled, at any time before the end of the period of twenty-eight days beginning with the date of service of the notice, to make representations in writing to the Secretary of State with respect to the application.

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- (5) In this section and section 56 below “fishing rights”, in relation to any inland waters, means any right (whether it is an exclusive right or a right in common with one or more other persons) to fish in those waters, where the right in question—
- (a) constitutes or is included in an interest in land; or
  - (b) is exercisable by virtue of an exclusive licence granted for valuable consideration;
- and any reference to an owner of fishing rights is a reference to the person for the time being entitled to those rights.
- (6) In this section any reference to a right included in an interest in land is a reference to a right which is exercisable only by virtue of, and as a right incidental to, the ownership of that interest.

#### **Textual Amendments**

**F136** Words in ss. 53-57 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(i)** (with Sch. 7)

#### **Modifications etc. (not altering text)**

**C79** S. 55 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **20(1)**

## **56 Determination of application under section 55.**

- (1) The Secretary of State, in determining any application under section 55 above in respect of any licence, shall take into account any representations in writing received by him, within the period mentioned in subsection (4) of that section, from the [<sup>F136</sup>appropriate agency] or from the holder of the licence.
- (2) Before determining on an application under section 55 above whether a licence should be revoked or varied the Secretary of State may, if he thinks fit—
- (a) cause a local inquiry to be held; or
  - (b) afford to the applicant, the holder of the licence and the [<sup>F136</sup>appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;
- and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant, the holder of the licence or the [<sup>F136</sup>appropriate agency] to be heard with respect to the proposals.
- (3) Subject to subsections (4) and (5) below, on an application under section 55 above in respect of any licence, the Secretary of State shall not determine that the licence shall be revoked or varied unless—
- (a) the grounds of the application, as mentioned in subsection (3) of that section, are established to his satisfaction; and
  - (b) he is satisfied that the extent of the loss or damage which the applicant has sustained, as mentioned in that subsection, is such as to justify the revocation or variation of the licence.
- (4) On an application under section 55 above in respect of any licence, the Secretary of State shall not determine that the licence shall be revoked or varied if he is satisfied that the fact that the abstraction of water in pursuance of the licence caused the loss



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- or damage which the applicant has sustained, as mentioned in subsection (3) of that section, was wholly or mainly attributable to exceptional shortage of rain or to an accident or other unforeseen act or event not caused by, and outside the control of, the [F136 appropriate agency].
- (5) Where the Secretary of State determines, on an application under section 55 above, that a licence shall be varied, the variation shall be limited to that which, in the opinion of the Secretary of State, is requisite having regard to the loss or damage which the applicant has sustained as mentioned in subsection (3) of that section.
- (6) Where the decision of the Secretary of State on an application under section 55 above in respect of any licence is that the licence should be revoked or varied, the decision shall include a direction to the [F136 appropriate agency] to revoke the licence or, as the case may be, to vary it so as to contain such provisions as may be specified in the direction.
- (7) A decision of the Secretary of State on an application under section 55 above shall be final.

#### Textual Amendments

**F136** Words in ss. 53-57 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(i)** (with Sch. 7)

#### Modifications etc. (not altering text)

**C80** S. 56 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **20(2)**

## 57 Emergency variation of licences for spray irrigation purposes.

- (1) This section applies where at any time—
- (a) one or more licences under this Chapter are in force in relation to a source of supply authorising water abstracted in pursuance of the licences to be used for the purpose of spray irrigation, or for that purpose together with other purposes; and
- (b) by reason of exceptional shortage of rain or other emergency, it appears to the [F136 appropriate agency] that it is necessary to impose a temporary restriction on the abstraction of water for use for that purpose.
- (2) Subject to subsections (3) and (4) below, where this section applies the [F136 appropriate agency] may serve a notice on the holder of any of the licences reducing, during such period as may be specified in the notice, the quantity of water authorised to be abstracted in pursuance of the licence from the source of supply for use for the purpose of spray irrigation; and, in relation to that period, the licence shall have effect accordingly subject to that reduction.
- (3) The [F136 appropriate agency] shall not serve a notice under this section in respect of abstraction of water from underground strata unless it appears to the [F136 appropriate agency] that such abstraction is likely to affect the flow, level or volume of any inland waters which are [F137 not discrete waters].
- (4) In the exercise of the power conferred by this section in a case where there are two or more licences under this Chapter in force authorising abstraction from the same

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source of supply either at the same point or at points which, in the opinion of the [<sup>F136</sup>appropriate agency], are not far distant from each other—

- (a) the [<sup>F136</sup>appropriate agency] shall not serve a notice under this section on the holder of one of the licences unless a like notice is served on the holders of the other licences in respect of the same period; and
  - (b) the reductions imposed by the notices on the holders of the licences shall be so calculated as to represent, as nearly as appears to the [<sup>F136</sup>appropriate agency] to be practicable, the same proportion of the quantity of water authorised by the licences (apart from the notices) to be abstracted for use for the purpose of spray irrigation.
- (5) The provisions of this section shall have effect without prejudice to the exercise of any power conferred by sections 51 to 54 above.

#### Textual Amendments

**F136** Words in ss. 53-57 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 270\(i\)](#) (with [Sch. 7](#))

**F137** Words in [s. 57\(3\)](#) substituted (1.1.2018) by [Water Act 2003 \(c. 37\)](#), [s. 105\(3\)](#), [Sch. 7 para. 5](#); [S.I. 2017/1043](#), [art. 2\(g\)](#)

#### Modifications etc. (not altering text)

**C81** [S. 57](#) modified (18.5.1992) by [S.I. 1992/1096](#), [art. 4](#)

**C82** [S. 57\(1\)\(2\)\(4\)](#) modified (18.5.1992) by [S.I. 1992/1096](#), [arts. 3, 4](#), [Sch.](#)

<sup>F138</sup>58

#### Textual Amendments

**F138** [S. 58](#) repealed (1.4.1996) by [1995 c. 25](#), [s. 120\(1\)\(3\)](#), [Sch. 22 para. 136](#), [Sch. 24](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3\(xxix\)](#)

## 59 Regulations with respect to modification applications.

- (1) The Secretary of State may by regulations make provision as to the manner in which applications for the revocation or variation of licences under this Chapter are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such applications or decisions on any such applications.
- (2) Subsection (1) above shall have effect subject to any express provision contained in, or having effect by virtue of, any other enactment contained in this Chapter; and any regulations made under this section shall have effect subject to any such express provision.

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## <sup>F139</sup>Transfer and apportionment of licences

### Textual Amendments

**F139** Ss. 59A-59D and cross-heading inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 23(1)**, 105(3); S.I. 2006/984, **art. 2(m)** (with **Sch. para. 3**)

## 59A Transfer of licence

- (1) The following licences—
  - (a) a full licence;
  - (b) a transfer licence; or
  - (c) a licence to obstruct or impede the flow of inland waters by means of impounding works,may be transferred by the holder of the licence to another person (“the transferee”) in accordance with the following provisions of this section.
- (2) The holder and the proposed transferee shall give notice (a “transfer notice”) to the [<sup>F140</sup>appropriate agency] of their agreement that the licence should be transferred.
- (3) The transfer notice shall include—
  - (a) such information as the [<sup>F140</sup>appropriate agency] reasonably requires; and
  - (b) (in the case of the transfer of a full licence or of a transfer licence) a declaration by the proposed transferee that—
    - (i) he has, or at the time when the proposed transfer is to take effect will have, a right of access in relation to each point of abstraction; and
    - (ii) he will continue to have such a right for the period of at least one year beginning with the date on which the proposed transfer is to take effect, or until the licence is to expire (if sooner),and may specify the date on which the holder and the transferee wish the transfer to take effect.
- (4) If the holder is a person in whom the licence has vested under section 59B below, a transfer notice shall be of no effect unless the notice required by section 59B(4) has been given.
- (5) Subject to subsection (4) above, if the [<sup>F140</sup>appropriate agency] receives a transfer notice which complies with the requirements of subsections (2) and (3) above, the [<sup>F140</sup>appropriate agency] shall amend the licence by substituting the name of the transferee as holder of the licence.
- (6) The transfer shall take effect—
  - (a) from the date on which the [<sup>F140</sup>appropriate agency] amends the licence; or
  - (b) from the date specified in the transfer notice, if later.
- (7) Nothing in this section shall affect the liability of the holder of the licence for any failure by him, before the transfer took effect, to comply with any condition or requirement of that licence.
- (8) In this section—

“point of abstraction” means a place where the licence authorises water to be abstracted from inland waters or (as the case may be) a place consisting of

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or comprising underground strata from which the licence authorises water to be abstracted; and

“right of access” means, in relation to a point of abstraction, a right of access to land of the kind referred to in subsection (2)(a) or, as the case may be, (3)(a) of section 35 above; and references to a person who will have such a right of access shall be construed in accordance with that section (including subsections (4) to (6)).

#### Textual Amendments

**F140** Words in ss. 59A-59C substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(j)** (with Sch. 7)

#### Modifications etc. (not altering text)

**C83** S. 59A applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **21**

### 59B Vesting of licence on death or bankruptcy of holder

- (1) On the death of the holder of a licence under this Chapter, the licence shall be regarded as property forming part of the deceased’s personal estate, whether or not it would be so regarded apart from this subsection, and shall accordingly vest in his personal representatives.
- (2) If a bankruptcy order is made against the holder of a licence under this Chapter, the licence shall be regarded for the purposes of any of the Second Group of Parts of the Insolvency Act 1986 (insolvency of individuals; bankruptcy) as property forming part of the bankrupt’s estate, whether or not it would be so regarded apart from this subsection, and shall accordingly vest as such in the trustee in bankruptcy.
- (3) A person in whom a licence vests under this section shall become the holder of the licence, in place of the prior holder, from the date of the vesting.
- (4) Where a licence other than a temporary licence vests in any person under this section, that person shall give notice of that fact to the <sup>F140</sup>appropriate agency] not later than the end of the period of fifteen months beginning with the date of the vesting.
- (5) If—
  - (a) a licence vests in any person under this section; but
  - (b) that person fails to give the notice required by subsection (4) above within the period mentioned there,
 the licence shall cease to have effect.

#### Textual Amendments

**F140** Words in ss. 59A-59C substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(j)** (with Sch. 7)

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### 59C Apportionment of licence to abstract

- (1) The holder of a full licence or of a transfer licence (the “old licence”) may apply to the [<sup>F140</sup>appropriate agency] for the division of the holder’s right to abstract water in accordance with the old licence and for the transfer—
  - (a) to another person of part, or to a number of other persons of parts not amounting to the whole; or
  - (b) to a number of other persons of parts amounting in all to the whole, of that right.
- (2) The holder of the old licence and any person proposing to carry on a part of the abstraction authorised by the old licence in place of the holder (a “successor”) shall give notice to the [<sup>F140</sup>appropriate agency] of their agreement to the division and transfer (an “apportionment notice”).
- (3) The apportionment notice shall, in relation to the abstraction authorised by the old licence—
  - (a) specify, for each proposed successor, what quantity of water he proposes to abstract, and (if the holder of the old licence is to continue the abstraction in part) what quantity of water he proposes to abstract;
  - (b) specify the purpose or purposes for which those persons referred to in paragraph (a) above who would require a new licence granted under subsection (5) below would abstract water (being one or more of the purposes for which abstraction is authorised under the old licence);
  - (c) specify the point (or points) of abstraction from which it is proposed that the persons referred to in paragraph (a) above would abstract water (being one or more of the points from which abstraction is authorised under the old licence);
  - (d) include a declaration by each of those persons who requires a licence under this Chapter in order to carry on the abstraction that—
    - (i) he has, or at the time when the proposed grant to him of a new licence under subsection (5) below is to take effect will have, a right of access in relation to each such point of abstraction; and
    - (ii) he will continue to have such a right for the period of at least one year beginning with the date on which the new licence is to take effect, or until it is to expire (if sooner); and
  - (e) include such other information as the [<sup>F140</sup>appropriate agency] reasonably requires, and may specify the date on which the holder and the successor (or successors) wish the division and transfer (or transfers) to take effect.
- (4) The apportionment notice shall be accompanied by an application on the part of the holder of the old licence for its revocation.
- (5) Subject to subsection (9) below, if the [<sup>F140</sup>appropriate agency] receives an apportionment notice and the application for revocation referred to in subsection (4) above, the [<sup>F140</sup>appropriate agency] shall—
  - (a) revoke the old licence;
  - (b) if the holder is to continue the abstraction in part and a licence is required under this Chapter for that purpose, grant to the holder of the old licence a licence relating to that part of the abstraction; and

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- (c) grant to each successor who requires a licence under this Chapter in order to carry on his part of the abstraction a licence relating to that part of the abstraction.
- (6) Sections 34 to 45 above shall not apply to the grant of a new licence under subsection (5) above.
- (7) Subject to section 46 above and to any provision of regulations made under section 59D(1) below, each new licence to be granted under subsection (5) above shall be granted subject to provisions which correspond as nearly as practicable to those of the old licence in relation to the part of the abstraction to be authorised by the new licence.
- (8) The revocation of the old licence and the grant of the new licences shall take effect—
- (a) from the date on which the [<sup>F140</sup>appropriate agency] revokes the old licence and grants the new ones; or
  - (b) from the date specified in the apportionment notice, if later.
- (9) The [<sup>F140</sup>appropriate agency] shall not grant a new licence to the holder of the old licence or to a successor if, by virtue of an exemption, the restriction on abstraction would not apply to that part of the abstraction proposed in relation to him in the apportionment notice.
- (10) For the purposes of this Chapter, a person (whether the holder of the old licence or a successor) who proposes to carry on a part of the abstraction in the circumstances mentioned in subsection (9) above shall, if the old licence was a full licence, be taken to have the right to do so in relation to that part, subject to subsection (11) below.
- (11) For the purposes of this Chapter, a person shall cease to be taken to have a right, by virtue of subsection (10) above, to carry on an abstraction if—
- (a) during a period mentioned in subsection (12) below that person does not carry out any such abstraction; or
  - (b) following an order under section 27A(1) above or regulations under section 33A above, that person is granted a full licence in respect of abstraction from the same point.
- (12) The period referred to in subsection (11)(a) above is—
- (a) four years; or
  - (b) if the abstractions authorised under the old licence were abstractions planned to be carried out at intervals of more than four years, or abstractions for emergency purposes only, such longer period as the [<sup>F140</sup>appropriate agency] may determine on the application of the person in question.
- (13) For the purposes of section 39A above, a new licence granted under subsection (5) above shall be treated—
- (a) as if it had been granted at the time the old licence was granted; and
  - (b) as if it and any other new licence granted by virtue of the relevant apportionment notice had been granted in place of the old licence.
- (14) In this section—
- “exemption” means the disapplication of the restriction on abstraction under or by virtue of section 27 or 33A above; and
- “point of abstraction” and “right of access” have the same meanings as in section 59A above.

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### Textual Amendments

**F140** Words in ss. 59A-59C substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(j)** (with Sch. 7)

### Modifications etc. (not altering text)

**C84** S. 59C applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **22**

## 59D Apportionment of licence to abstract: supplementary

- (1) The Secretary of State may make regulations about the provisions to be contained in licences granted under section 59C above.
- (2) Nothing in section 59C above shall affect the liability of the holder of the old licence for any failure by him, before the revocation of that licence took effect, to comply with any condition or requirement of that licence.
- (3) If the holder of the old licence is a person in whom the old licence has vested under section 59B above, an apportionment notice shall be of no effect unless the notice required by section 59B(4) has been given.
- (4) In this section, “apportionment notice” and “old licence” have the same meanings as in section 59C above.]

*Remedies and compensation in respect of infringement of protected rights etc.*

## 60 Liability of the [F141 appropriate agency] for derogation from protected right.

- (1) A breach of the duty imposed by subsection (1) of section 39 above (including that duty as applied by section 51(3) or 53(5) above) shall neither invalidate the grant or variation of a licence nor be enforceable by any criminal proceedings, by prohibition or injunction or by action against any person other than the [F141 appropriate agency].
- (2) Instead, the duty referred to in subsection (1) above shall be enforceable, at the suit of any person entitled to a protected right for the purposes of this Chapter, by an action against the [F141 appropriate agency] for damages for breach of statutory duty.
- (3) Where under any provision of this Chapter, the [F141 appropriate agency] is directed by the Secretary of State to grant or vary a licence, and the licence, as granted or varied in compliance with the direction, authorises derogation from protected rights, then—
  - (a) the grant or variation of the licence shall, as between the [F141 appropriate agency] and the person entitled to those rights, have effect as a breach on the part of the [F141 appropriate agency] of a statutory duty not to authorise derogation from those rights; and
  - (b) subsection (2) above shall apply in relation to that statutory duty as it applies in relation to the duty imposed by section 39(1) above.
- (4) Subsection (3) above shall be without prejudice to the duty of the [F141 appropriate agency], to comply with the direction in question, but that duty shall not afford any defence in an action brought by virtue of paragraph (b) of that subsection.

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- (5) In any action brought against the [<sup>F141</sup>appropriate agency] in pursuance of this section it shall be a defence for the [<sup>F141</sup>appropriate agency] to show that the fact, as the case may be—
- (a) that the abstraction of water authorised by the licence, as granted or varied by the [<sup>F141</sup>appropriate agency], derogated from the plaintiff's protected right; or
  - (b) that the obstruction or impeding of the flow of the inland waters authorised by the licence, as so granted or varied, derogated from the plaintiff's protected right,
- was wholly or mainly attributable to exceptional shortage of rain or to an accident or other unforeseen act or event not caused by, and outside the control of, the [<sup>F141</sup>appropriate agency].
- (6) This section has effect subject to the provision made by Schedule 7 to this Act.
- (7) In this section any reference to authorising a derogation from protected rights is a reference to so authorising—
- (a) the abstraction of water; or
  - (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
- as to derogate from rights which, at the time of the authorisation, are protected rights for the purposes of this Chapter.

#### Textual Amendments

**F141** Words in s. 60 and heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(k)** (with Sch. 7)

#### Modifications etc. (not altering text)

**C85** S. 60 applied (with modifications) (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **23**

## 61 Compensation where licence modified on direction of the Secretary of State.

- (1) Where a licence [<sup>F142</sup>held by a person other than a water undertaker or sewerage undertaker] is revoked or varied in pursuance of a direction under section 54 or [<sup>F143</sup>56] above and it is shown that the holder of the licence—
- (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or variation; or
  - (b) has otherwise sustained loss or damage which is directly attributable to the revocation or variation,
- the [<sup>F144</sup>appropriate agency] shall pay him compensation in respect of that expenditure, loss or damage.
- (2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to any work, shall be taken to be included in the expenditure incurred in carrying out that work.
- (3) Subject to subsection (2) above and to Schedule 7 to this Act, no compensation shall be paid under this section—



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- (a) in respect of any work carried out before the grant of the licence which is revoked or varied; or
  - (b) in respect of any other loss or damage arising out of anything done or omitted to be done before the grant of that licence.
- (4) No compensation shall be payable under this section in respect of a licence to abstract water, if it is shown that no water was abstracted in pursuance of the licence during the period of [<sup>F145</sup>four] years ending with the date on which notice of the proposals for revoking or varying the licence was served on the holder of the licence.
- [<sup>F146</sup>(4A) No compensation shall be payable under this section in respect of the variation of a full licence, or of a transfer licence which specifies a minimum value under section 46(2A) above, so as to reduce the quantity of water which the holder of the licence is authorised by the licence to abstract from the source of supply to which the licence relates if—
- (a) the ground for varying the licence is that the Secretary of State is satisfied that the variation is necessary in order to protect the availability of water in the source of supply to which the licence relates;
  - (b) the variation does not reduce the quantity of water which the holder of the licence is authorised by the licence to abstract to less than the minimum value specified in the licence under section 46(2A) above for the purposes of this subsection; and
  - (c) the conditions set out in subsection (4B) below are satisfied.
- (4B) Those conditions are that—
- (a) the licence was granted after the coming into force of section 19 of the Water Act 2003;
  - (b) the variation is made no sooner than the end of the period of six years beginning with the date on which the licence took effect; and
  - (c) the variation takes effect no sooner than the end of the period of six years beginning with the date of the variation.]
- (5) Any question of disputed compensation under this section shall be referred to and determined by the [<sup>F147</sup>Upper Tribunal]; and in relation to the determination of any such compensation the provisions of [<sup>F148</sup>section] 4 of the <sup>M10</sup>Land Compensation Act 1961 shall apply, subject to any necessary modifications.
- (6) For the purpose of assessing any compensation under this section, in so far as that compensation is in respect of loss or damage consisting of depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (7) Where the interest in land, in respect of which any compensation falls to be assessed in accordance with subsection (6) above, is subject to a mortgage—
- (a) the compensation shall be assessed as if the interest were not subject to the mortgage;
  - (b) a claim for the compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
  - (c) no such compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage);

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- (d) any such compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

#### Textual Amendments

- F142** Words in s. 61(1) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 58(2)**, 94(2)(l)
- F143** Word in s. 61(1) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 6**; S.I. 2004/641, art. 3(y), **Sch. 2** (with Sch. 3 para. 7)
- F144** Words in s. 61 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(k)** (with Sch. 7)
- F145** Word in s. 61(4) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 25(2)**, 105(3) (with s. 25(4)); S.I. 2004/641, art. 3(h) (with Sch. 3 para. 7)
- F146** S. 61(4A)(4B) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 25(3)**, 105(3); S.I. 2006/984, art. 2(n)
- F147** Words in s. 61(5) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 228(a)** (with Sch. 5)
- F148** Word in s. 61(5) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 228(b)** (with Sch. 5)

#### Modifications etc. (not altering text)

- C86** S. 61 modified (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 27(2)**, 105(3); S.I. 2004/641, art. 3(i) (with Sch. 3 para. 7)
- C87** S. 61 excluded (1.4.2006) by [Water Resources \(Abstraction and Impounding\) Regulations 2006 \(S.I. 2006/641\)](#), regs. 1(2), **24**

#### Marginal Citations

- M10** 1961 c. 33.

### <sup>F149</sup>61A Recovery of compensation from new licence-holder

.....

#### Textual Amendments

- F149** S. 61A repealed (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 58(3)**, 94(2)(l)

### 62 Compensation for owner of fishing rights applying under section 55.

- (1) Where a licence is revoked or varied on an application under section 55 above, the applicant shall be entitled to compensation from the [<sup>F150</sup>appropriate agency] in respect of the loss or damage which he has sustained as mentioned in subsection (3) of that section.
- (2) Where, on an application under section 55 above for the revocation or variation of a licence, the Secretary of State determines—
- (a) that the grounds of the application (as mentioned in subsection (3) of that section) have been established to his satisfaction; but
  - (b) that the licence shall not be revoked or varied in pursuance of that application, he shall certify accordingly for the purposes of the following provisions of this section.

*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) Unless within the period of six months from the date on which a certificate under subsection (2) above is granted either—
- (a) notice to treat for the acquisition of the fishing rights of the applicant, or of an interest in land which includes those rights, has been served by the [<sup>F150</sup>appropriate agency]; or
  - (b) an offer has been made by the [<sup>F150</sup>appropriate agency] to the owner of those rights to acquire them on compulsory purchase terms or, where the rights subsist only as rights included in an interest in land, to acquire that interest on such terms,
- the owner of the fishing rights shall be entitled to compensation from the [<sup>F150</sup>appropriate agency].
- (4) The amount of the compensation payable under subsection (3) above in respect of any fishing rights shall be the amount by which—
- (a) the value of those rights; or
  - (b) where they subsist only as rights included in an interest in land, the value of that interest,
- is depreciated by the operation of section 48(2) above in relation to the licence to which the application related.
- (5) Any question of disputed compensation under this section shall be referred to and determined by the [<sup>F151</sup>Upper Tribunal] ; and in relation to the determination of any such compensation the provisions of [<sup>F152</sup>section] 4 of the <sup>M11</sup>Land Compensation Act 1961 shall apply, subject to any necessary modifications.
- (6) For the purposes of this section a right or interest is acquired on compulsory purchase terms if it is acquired on terms that the price payable shall be equal to and shall, in default of agreement, be determined in like manner as the compensation which would be payable in respect thereof if the right or interest were acquired compulsorily by the [<sup>F150</sup>appropriate agency].
- (7) Where—
- (a) the Secretary of State, on an application under section 55 above, determines that the licence to which the application relates shall not be revoked or varied and grants a certificate under subsection (2) above; and
  - (b) notice to treat for the acquisition of the fishing rights to which the application related, or of an interest in land in which those rights are included, has been served by the [<sup>F150</sup>appropriate agency] within the period of six months from the date on which that certificate is granted,
- then, for the purpose of assessing compensation in respect of any compulsory acquisition in pursuance of that notice to treat, no account shall be taken of any depreciation of the value of the fishing rights, or of the interest in question, which is applicable to the operation, in relation to that licence, of section 48(2) above.
- (8) Subsections (5) and (6) of section 55 above shall apply for construing references in this section to fishing rights or to rights included in an interest in land as they have effect for construing such references in that section.

#### Textual Amendments

**F150** Words in s. 62 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(k\)](#) (with Sch. 7)

*Status: Point in time view as at 17/09/2018.*

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**F151** Words in s. 62(5) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 229(a)** (with Sch. 5)

**F152** Word in s. 62(5) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 229(b)** (with Sch. 5)

#### Marginal Citations

**M11** 1961 c. 33.

### 63 Secretary of State to indemnify [<sup>F153</sup>appropriate agency] in certain cases.

(1) Where—

- (a) the [<sup>F153</sup>appropriate agency] is liable under section 60 above to pay damages to any person in consequence of the grant or variation of a licence in compliance with a direction given by the Secretary of State; and
- (b) the [<sup>F153</sup>appropriate agency] pay to that person any sum in satisfaction of that liability,

then, whether an action for recovery of those damages has been brought or not, the Secretary of State may, if he thinks fit, pay to the [<sup>F153</sup>appropriate agency] the whole or such part as he considers appropriate of the relevant amount.

(2) If—

- (a) proposals for revoking or varying the licence, in a case falling within subsection (1) above, are formulated by the [<sup>F153</sup>appropriate agency], or an application with respect to any licence is made under section 55 above;
- (b) in consequence of those proposals or that application, the licence is revoked or varied; and
- (c) compensation in respect of the revocation or variation is payable by the [<sup>F153</sup>appropriate agency] under section 61 above,

the Secretary of State may, if he thinks fit, pay to the [<sup>F153</sup>appropriate agency] the whole or such part as he considers appropriate of the relevant amount.

(3) Where—

- (a) the Secretary of State determines under section 55 above—
  - (i) that a licence granted in compliance with a direction given by the Secretary of State shall be revoked or varied; or
  - (ii) that a licence shall not be revoked or varied;
 and
- (b) in consequence of that determination, compensation is payable by the [<sup>F153</sup>appropriate agency] under section 62 above,

the Secretary of State may, if he thinks fit, pay to the [<sup>F153</sup>appropriate agency] the whole or such part as he considers appropriate of the relevant amount.

(4) In this section “the relevant amount” means—

- (a) for the purposes of subsection (1) above, the amount of the sum paid by the [<sup>F153</sup>appropriate agency] and, if an action has been brought against the [<sup>F153</sup>appropriate agency] in respect of the liability mentioned in that subsection, the amount of any costs reasonably incurred by the [<sup>F153</sup>appropriate agency] in connection with the action (including any costs of the plaintiff which the [<sup>F153</sup>appropriate agency] was required to pay); and

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- (b) for the purposes of subsections (2) and (3) above, the amount of the compensation and, if any question relating to that compensation is referred to the [<sup>F154</sup>Upper Tribunal], the amount of any costs reasonably incurred by the [<sup>F153</sup>appropriate agency] in connection with that reference (including any costs of the claimant which the [<sup>F153</sup>appropriate agency] is required to pay).

#### Textual Amendments

- F153** Words in s. 63 and heading substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 270(k)** (with Sch. 7)
- F154** Words in s. 63(4)(b) substituted (1.6.2009) by The Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307), art. 1, **Sch. 1 para. 230** (with Sch. 5)

### *Supplemental provisions of Chapter II*

#### **64 Abstracting and impounding by the [<sup>F155</sup>appropriate agency].**

- (1) The provisions of this Chapter shall have effect—
- (a) in relation to the abstraction of water by the [<sup>F155</sup>appropriate agency] from sources of supply; and
- [<sup>F156</sup>(b) in relation to—
- (i) the construction or alteration by the [<sup>F155</sup>appropriate agency] of impounding works; and
- (ii) the obstruction or impeding by the [<sup>F155</sup>appropriate agency] of the flow of inland waters by means of impounding works,]
- subject to such exceptions and modifications as may be prescribed.
- (2) Regulations under this section may, in particular, provide for securing—
- (a) that any licence required by the [<sup>F155</sup>appropriate agency] in relation to the matters mentioned in subsection (1) above shall be granted (or be deemed to be granted) by the Secretary of State, and not be granted by the [<sup>F155</sup>appropriate agency];
- (b) that, in such cases and subject to such conditions as may be prescribed, any licence so required by the [<sup>F155</sup>appropriate agency] shall be deemed to be granted by the Secretary of State unless the Secretary of State requires an application for the licence to be made to him by the [<sup>F155</sup>appropriate agency]; and
- (c) that where a licence is deemed to be granted as mentioned in paragraph (b) above, the [<sup>F155</sup>appropriate agency] shall give such notice of that fact as may be prescribed.
- (3) Without prejudice to the preceding provisions of this section, section 52 above shall not apply in relation to any licence which by virtue of any regulations under this section is granted or deemed to have been granted by the Secretary of State, except in accordance with regulations under this section.

#### Textual Amendments

- F155** Words in s. 64 and heading substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 270(k)** (with Sch. 7)

*Status: Point in time view as at 17/09/2018.*

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**F156** S. 64(1)(b) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 2(7), 105(3)** (with s. 2(10)); S.I. 2006/984, art. 2(b) (with Sch. para. 2)

## 65 Licences of right.

Schedule 7 to this Act shall have effect for the purposes of giving effect to provisions conferring an entitlement to licences under this Chapter and with respect to licences granted in pursuance of that entitlement or the entitlement conferred by section 33 of the <sup>M12</sup>Water Resources Act 1963 or paragraph 30 or 31 of Schedule 26 to the <sup>M13</sup>Water Act 1989.

### Marginal Citations

**M12** 1963 c. 38.

**M13** 1989 c. 15.

## 66 Inland waters owned or managed by [<sup>F157</sup>Canal & River Trust].

- (1) This section applies to all inland waters owned or managed by [<sup>F158</sup>Canal & River Trust], except any such inland waters to which the Secretary of State may by order made by statutory instrument direct that this section shall not apply.
- (2) In respect of abstraction from any inland waters to which this section applies—
  - <sup>F159</sup>(a) .....
  - (b) no person other than [<sup>F160</sup>Canal & River Trust] shall be entitled to apply for a licence under this Chapter;
  - (c) in relation to any application by [<sup>F161</sup>Canal & River Trust] for a licence under this Chapter—
    - (i) section 35 above shall not apply; and
    - (ii) section 37 above shall apply as if [<sup>F162</sup>paragraphs (b) and (c), and the succeeding words, of subsection (3) of that section were omitted.]
- (3) Before making an order under subsection (1) above, the Secretary of State shall consult [<sup>F163</sup>Canal & River Trust] and the [<sup>F164</sup>appropriate agency].

### Textual Amendments

- F157** Words in s. 66 heading substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 3 para. 11(2)** (with arts. 4-6)
- F158** Words in s. 66(1) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 3 para. 11(3)(a)** (with arts. 4-6)
- F159** S. 66(2)(a) repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), Sch. 7 para. 7, **Sch. 9 Pt. 3**; S.I. 2006/984, art. 2(s)(i)
- F160** Words in s. 66(2)(b) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 3 para. 11(3)(b)** (with arts. 4-6)
- F161** Words in s. 66(2)(c) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 3 para. 11(3)(b)** (with arts. 4-6)
- F162** Words in s. 66(2)(c)(ii) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 14(3)(d), 105(3)**; S.I. 2006/984, art. 2(i) (with Sch. paras. 1, 2)
- F163** Words in s. 66(3) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 3 para. 11(3)(b)** (with arts. 4-6)

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**F164** Words in s. 66(3) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 270\(1\)](#) (with Sch. 7)

## 67 Ecclesiastical property.

- (1) Where the relevant land <sup>F165</sup>is vested in the incumbent of a benefice<sup>F166</sup>or (in the case of a licence under this Chapter to abstract water) where it is a benefice which has a right of access to the relevant land]—
  - (a) an application for a licence under this Chapter may be made by the <sup>F167</sup>Diocesan Board of Finance for the diocese in which the land is situated] if the benefice is for the time being vacant; and
  - (b) any reference in this Chapter to the applicant for a licence shall be construed—
    - (i) in relation to any time when the benefice in question is vacant, as a reference to the<sup>F167</sup>Diocesan Board of Finance for the diocese in which the land is situated]; and
    - (ii) in relation to any time when there is an incumbent of the benefice, as a reference to that incumbent.
- (2) Where the relevant land <sup>F168</sup>is vested in the incumbent of a benefice<sup>F166</sup>or (in the case of a licence under this Chapter to abstract water) where it is a benefice which has a right of access to the relevant land], any licence under this Chapter shall provide that (notwithstanding anything in the preceding provisions of this Chapter) whoever is for the time being the incumbent of the benefice shall be the holder of the licence.
- (3) Where a licence under this Chapter provides as mentioned in subsection (2) above—
  - (a) the licence shall not be required to specify the person to whom the licence is granted; and
  - (b) the licence shall be deemed to be held by the <sup>F169</sup>Diocesan Board of Finance for the diocese in which the land is situated] at any time when the benefice in question is vacant.
- (4) So much of any compensation falling to be paid under this Chapter as is payable—
  - (a) in respect of damage to land which is ecclesiastical property and to the owner of the fee simple in the land; or
  - (b) in respect of depreciation of the value of the fee simple in land which is ecclesiastical property,shall be paid (where the fee simple is vested in any person other than the <sup>F170</sup>Diocesan Board of Finance for the diocese in which the land is situated]) to <sup>F171</sup>it], instead of to the person in whom the fee simple is vested.
- (5) Any sums paid under subsection (4) above to the <sup>F172</sup>Diocesan Board of Finance] with reference to any land shall—
  - (a) if the land is not consecrated, be applied by <sup>F172</sup>it] for the purposes for which the proceeds of a sale by agreement of the fee simple in the land would be applicable under any enactment or Measure authorising such a sale or disposing of the proceeds of such a sale; and
  - (b) if the land is consecrated, be applied by <sup>F172</sup>it]<sup>F172</sup>as if the land had been sold under the Pastoral Measure 1983].
- (6) Where—

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- (a) [<sup>F173</sup>a Diocesan Board of Finance is] required, by virtue of subsection (3)(b) above, to pay any fee or other charge in respect of a licence under this Chapter; and
- (b) any moneys are then payable by the [<sup>F174</sup>Board] to the incumbent of the benefice in question or subsequently become so payable, the [<sup>F174</sup>Board] shall be entitled to retain out of those moneys an amount not exceeding the amount of that fee or other charge.
- (7) Where under any provision of this Chapter a document is required to be served on an owner of land and the land is ecclesiastical property, a copy of the document shall be served on the [<sup>F175</sup>Diocesan Board of Finance for the diocese in which the land is situated].
- (8) In this section —
- “benefice” means an ecclesiastical benefice of the Church of England;
- “ecclesiastical property” means land which—
- (a) belongs to a benefice;
- (b) is or forms part of a church subject to the jurisdiction of the bishop of any diocese of the Church of England or the site of a church so subject; or
- (c) is or forms part of a burial ground so subject;
- and
- “the relevant land”, in relation to a licence under this Chapter or an application for such a licence, means—
- (a) [<sup>F176</sup>the land to which an applicant for a licence to abstract water is required by section 35 above to have a right of access; or]
- (b) in the case of a licence for the purposes of section 25 above or an application for such a licence—
- (i) the land on which any part of the impounding works [<sup>F177</sup>is, or] is to be, or is proposed to be, constructed; or
- (ii) in relation to an alteration of impounding works, the land on which any part of those works is situated or is to be, or is proposed to be, situated.

#### Textual Amendments

- F165** Words in s. 67(1) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 30\(b\)](#); 2006 No. 2, Instrument made by Archbishops
- F166** Words in s. 67(1)(2) inserted (1.4.2006) by [Water Act 2003 \(c. 37\), s. 105\(3\), Sch. 7 para. 8\(2\)](#); S.I. 2006/984, art. 2(s)(i)
- F167** Words in s. 67(1) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 30\(a\)](#); 2006 No. 2, Instrument made by Archbishops
- F168** Words in s. 67(2) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 30\(b\)](#); 2006 No. 2, Instrument made by Archbishops
- F169** Words in s. 67(3) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 30\(a\)](#); 2006 No. 2, Instrument made by Archbishops
- F170** Words in s. 67(4) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 30\(a\)](#); 2006 No. 2, Instrument made by Archbishops
- F171** Word in s. 67(4) substituted (1.10.2006) by [Church of England \(Miscellaneous Provisions\) Measure 2006 \(No. 1\), s. 16\(2\), Sch. 5 para. 30\(c\)](#); 2006 No. 2, Instrument made by Archbishops



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- F172** Words in s. 67(5) substituted (1.10.2006) by Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), s. 16(2), **Sch. 5 para. 30(d)**; 2006 No. 2, Instrument made by Archbishops
- F173** Words in s. 67(6)(a) substituted (1.10.2006) by Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), s. 16(2), **Sch. 5 para. 30(e)**; 2006 No. 2, Instrument made by Archbishops
- F174** Words in s. 67(6) substituted (1.10.2006) by Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), s. 16(2), **Sch. 5 para. 30(f)**; 2006 No. 2, Instrument made by Archbishops
- F175** Words in s. 67(7) substituted (1.10.2006) by Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), s. 16(2), **Sch. 5 para. 30(a)**; 2006 No. 2, Instrument made by Archbishops
- F176** Words in s. 67(8) substituted (1.4.2006) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 8(3)**; S.I. 2006/984, art. 2(s)(i)
- F177** Words in s. 67(8) inserted (1.4.2006) by Water Act 2003 (c. 37), **ss. 2(8), 105(3)** (with s. 2(10)); S.I. 2006/984, art. 2(b) (with Sch. para. 2)

**F178** **68**

#### Textual Amendments

- F178** S. 68 repealed (21.9.1995) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 138, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

### **69 Validity of decisions of Secretary of State and related proceedings.**

- (1) Except as provided by the following provisions of this section, the validity of a decision of the Secretary of State on—
  - (a) any appeal to the Secretary of State under this Chapter; or
  - (b) any reference to the Secretary of State in pursuance of a direction under section 41 above or in pursuance of section 53(4) above,shall not be questioned in any legal proceedings whatsoever.
- (2) If, in the case of any such appeal or reference, the [<sup>F179</sup>appropriate agency] or the other party desires to question the validity of the decision of the Secretary of State on the grounds—
  - (a) that the decision is not within the powers of this Act; or
  - (b) that any of the requirements of, or of any regulations made under, this Chapter which are applicable to the appeal or reference have not been complied with,the [<sup>F179</sup>appropriate agency] or, as the case may be, the other party may, at any time within the period of six weeks beginning with the date on which the decision is made, make an application to the High Court under this section.
- (3) On any application under this section, the High Court may by interim order suspend the operation of the decision to which the application relates until the final determination of the proceedings.
- (4) If the High Court is satisfied, on an application under this section—
  - (a) that the decision to which the application relates is not within the powers of this Act; or
  - (b) that the interests of the person making the application under this section have been substantially prejudiced by a failure to comply with any of the requirements mentioned in subsection (2)(b) above,the High Court may quash the decision.

*Status: Point in time view as at 17/09/2018.*

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<sup>F180</sup>(5) .....

(6) In this section—

“decision” includes a direction; and

“other party” —

- (a) in relation to an appeal, means the appellant;
- (b) in relation to a reference in pursuance of a direction under section 41 above, means the applicant for the licence or, where that section applies by virtue of section 51(3) above, for the revocation or variation; and
- (c) in relation to a reference in pursuance of section 53(4) above, means (subject, without prejudice to their application to the other provisions of this Chapter, to subsections (6) and (7) of section 25 above) the holder of the licence.

#### Textual Amendments

**F179** Words in s. 69(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(m)** (with Sch. 7)

**F180** S. 69(5) repealed (21.9.1995) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 138, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

## 70 Civil liability under Chapter II.

Except in so far as this Act otherwise expressly provides and subject to the provisions of section 18 of the <sup>M14</sup>Interpretation Act 1978 (which relates to offences under two or more laws), the restrictions imposed by sections [<sup>F181</sup>24 and 25] above shall not be construed as—

- (a) conferring a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of those restrictions;
- (b) affecting any restriction imposed by or under any other enactment, whether contained in a public general Act or in a local or private Act; or
- (c) derogating from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Chapter.

#### Textual Amendments

**F181** Words in s. 70 substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 8(4), 105(3)**; S.I. 2006/984, art. 2(e) (with Sch. paras. 4, 5)

#### Marginal Citations

**M14** 1978 c. 30.

## 71 Modification of local enactments.

(1) If it appears to the Secretary of State by whom an order is made under a provision of this Chapter to which this section applies that any local enactment passed or made before the relevant date—

- (a) is inconsistent with any of the provisions of that order; or
- (b) requires to be amended or adapted, having regard to any of the provisions of that order,

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the Secretary of State may by order repeal, amend or adapt that enactment to such extent, or in such manner, as he may consider appropriate.

- (2) Any order under this section may include such transitional, incidental, supplementary and consequential provisions as the Secretary of State may consider necessary or expedient.
- (3) The power to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) This section applies to the following provisions of this Chapter, that is to say, sections <sup>F182</sup>... 66, 68 and 72(5).
- (5) In this section—
  - “local enactment” means—
    - (a) a local or private Act;
    - (b) a public general Act relating to London;
    - (c) an order or scheme made under an Act, confirmed by Parliament or brought into operation in accordance with special parliamentary procedure; or
    - (d) an enactment in a public general Act amending a local or private Act or any such order or scheme;
  - “relevant date” means the date which was the second appointed day for the purposes of section 133 of the <sup>M15</sup>Water Resources Act 1963.
- (6) The provisions of this section shall have effect without prejudice to the exercise of any other power to repeal, amend or adapt local enactments which is conferred by any other enactment.

#### Textual Amendments

**F182** Word in s. 71(4) repealed (1.1.2018) by [Water Act 2003 \(c. 37\)](#), s. 105(3), Sch. 7 para. 9, [Sch. 9 Pt. 3](#); [S.I. 2017/1043](#), art. 2(g)

#### Marginal Citations

**M15** 1963 c. 38.

## 72 Interpretation of Chapter II.

- (1) In this Chapter—
  - “derogate”, in relation to a protected right, shall be construed in accordance with section 39(4) above;
  - “flow” shall be construed subject to section 23(3) above;
  - <sup>F183</sup>“full licence” has the meaning given in section 24A above;
  - “impounding works” has the meaning given by section 25(8) above;
  - “licence”, in relation to the variation or revocation of a licence, shall be construed subject to section 25(6) and (7) above;
  - “protected right” shall be construed in accordance with <sup>F184</sup>section 39A] above;

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“the restriction on abstraction” means the restriction imposed by section 24(1) above;

“the restriction on impounding works” means the restriction imposed by section <sup>F185</sup>25(1)(a) and (b) above;

“spray irrigation” means (subject to subsection (5) below) the irrigation of land or plants (including seeds) by means of water or other liquid emerging (in whatever form) from apparatus designed or adapted to eject liquid into the air in the form of jets or spray; and

“statutory provision” means a provision (whether of a general or special nature) which is contained in, or in any document made or issued under, any Act (whether of a general or special nature).

<sup>F183</sup>“temporary licence” and “transfer licence” have the meanings given in section 24A above.]

(2) References in this Chapter to a watercourse shall not include references—

- (a) to any sewer or part of a sewer vested in—
  - (i) a sewerage undertaker;
  - (ii) a local authority or joint planning board;
  - (iii) the <sup>F186</sup>new towns residuary body] or a development corporation for a new town;
  - (iv) a harbour board within the meaning of the <sup>M16</sup>Railway and Canal Traffic Act 1888;

or

- (b) to any adit or passage constructed in connection with a well, borehole or other similar work for facilitating the collection of water in the well, borehole or work.

<sup>F187</sup>(2A) In subsection (2)(a)(iii) “new towns residuary body” means—

- (a) in relation to England, the Homes and Communities Agency so far as exercising functions in relation to anything transferred (or to be transferred) to it as mentioned in section 52(1)(a) to (d) of the Housing and Regeneration Act 2008 <sup>F188</sup>or the Greater London Authority so far as exercising its new towns and urban development functions]; and
- (b) in relation to Wales, the Welsh Ministers so far as exercising functions in relation to anything transferred (or to be transferred) to them as mentioned in section 36(1)(a)(i) to (iii) of the New Towns Act 1981.]

(3) Any reference in this Chapter to the doing of anything in pursuance of a licence under this Chapter is a reference to its being done—

- (a) by the holder of such a licence; or
- (b) by a person acting as a servant or agent of, or otherwise under the authority of, the holder of such a licence,

at a time when the licence is in force and in circumstances such that, if no such licence were in force, the doing of that thing would contravene a restriction imposed by this Chapter.

(4) For the purposes of this Chapter land shall be taken to be contiguous to any inland waters notwithstanding that it is separated from those waters by a towpath or by any other land used, or acquired for use, in connection with the navigation of the inland waters, unless that other land comprises any building or works other than a lock, pier, wharf, landing-stage or similar works.

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- (5) The Ministers may by order direct that references to spray irrigation in this Chapter, and in any other enactments in which “spray irrigation” is given the same meaning as in this Chapter, or such of those references as may be specified in the order—
- (a) shall be construed as not including spray irrigation if carried out by such methods or in such circumstances or for such purposes as may be specified in the order; and
  - (b) without prejudice to the exercise of the power conferred by virtue of paragraph (a) above, shall be construed as including references to the carrying out, by such methods or in such circumstances or for such purposes as may be specified in the order, of irrigation of any such description, other than spray irrigation, as may be so specified.
- (6) The power of the Ministers to make an order under subsection (5) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F183** Words in s. 72(1) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 1(2)**, 105(3); S.I. 2006/984, [art. 2\(a\)](#) (with [Sch. paras. 1, 2](#))
- F184** Words in s. 72(1) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 17(2)**, 105(3); S.I. 2005/968, [art. 2\(d\)](#) (with [Sch. 1 para. 2](#))
- F185** Words in s. 72(1) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 2(9)**, 105(3) (with s. 2(10)); S.I. 2006/984, [art. 2\(b\)](#) (with [Sch. para. 2](#))
- F186** Words in s. 72(2)(a)(iii) substituted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 8 para. 60(2)**; S.I. 2008/3068, [art. 2\(1\)\(w\)\(3\)](#) (with arts. 6-13)
- F187** S. 72(2A) inserted (1.12.2008) by [Housing and Regeneration Act 2008 \(c. 17\)](#), s. 325(1), **Sch. 8 para. 60(3)**; S.I. 2008/3068, [art. 2\(1\)\(w\)\(3\)](#) (with arts. 6-13)
- F188** Words in s. 72(2A) inserted (1.4.2012) by [Localism Act 2011 \(c. 20\)](#), s. 240(2), **Sch. 19 para. 30**; S.I. 2012/628, [art. 6\(i\)](#) (with arts. 9, 11, 14, 15, 17)

#### Modifications etc. (not altering text)

- C88** S. 72(2)(a) applied (with modifications) (4.6.1996) by S.I. 1996/1243, [art. 18](#), **Sch. 5 Pt. II para. 6(2)(a)**

#### Marginal Citations

- M16** 1888 c. 25.

## CHAPTER III

### DROUGHT

#### 73 Power to make ordinary and emergency drought orders.

- [<sup>F189</sup>(1) If the Secretary of State is satisfied that, by reason of an exceptional shortage of rain, there exists or is threatened—
- (a) a serious deficiency of supplies of water in any area, or
  - (b) such a deficiency in the flow or level of water in any inland waters as to pose a serious threat to any of the flora or fauna which are dependent on those waters,

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then,], subject to the following provisions of this Chapter, he may by order (in this Chapter referred to as an “ordinary drought order”) make such provision authorised by this Chapter as appears to him to be expedient with a view to meeting the deficiency.

(2) If the Secretary of State—

- (a) is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened; and
- (b) is further satisfied that the deficiency is such as to be likely to impair the economic or social well-being of persons in the area,

then, subject to the following provisions of this Chapter, he may by order (in this Chapter referred to as an “emergency drought order”) make such provision authorised by this Chapter as appears to him to be expedient with a view to meeting the deficiency.

(3) Subject to section 76(3) below, the power to make a drought order in relation to any area shall not be exercisable [<sup>F190</sup>unless] an application is made to the Secretary of State—

- (a) by the [<sup>F191</sup>appropriate agency]; or
- (b) [<sup>F192</sup>except in the case of an ordinary drought order by virtue of subsection (1) (b) above,]by a water undertaker which supplies water to premises in that area.

(4) The power to make a drought order shall be exercisable by statutory instrument; and Schedule 8 to this Act shall have effect with respect to the procedure on an application for such an order.

#### Textual Amendments

**F189** Words in s. 73(1) substituted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 139(2)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

**F190** Words in s. 73 substituted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 139(3)(a)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

**F191** Words in ss. 73-75 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 270(n)** (with Sch. 7)

**F192** Words in s. 73 inserted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 139(3)(b)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

#### 74 Provisions and duration of ordinary drought order.

(1) An ordinary drought order made on the application of the [<sup>F191</sup>appropriate agency] may contain any of the following provisions, that is to say—

- (a) provision authorising the [<sup>F191</sup>appropriate agency] (or persons authorised to do so by the [<sup>F191</sup>appropriate agency]) to take water from any source specified in the order subject to any conditions or restrictions so specified;
- (b) provision authorising the [<sup>F191</sup>appropriate agency] (or persons authorised to do so by the [<sup>F191</sup>appropriate agency]) to discharge water to any place specified in the order subject to any conditions or restrictions so specified;
- (c) provision authorising the [<sup>F191</sup>appropriate agency] to prohibit or limit the taking by any person (including a water undertaker) of water from a source specified in the order if the [<sup>F191</sup>appropriate agency] is satisfied that the taking of water from that source seriously affects the supplies available to the [<sup>F191</sup>appropriate agency], any water undertaker or any other person;

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- (d) provision suspending or modifying, subject to any conditions specified in the order, any restriction or obligation to which the [<sup>F191</sup>appropriate agency], any water undertaker or sewerage undertaker or any other person is subject as respects—
    - (i) the taking of water from any source;
    - (ii) the discharge of water;
    - (iii) the supply of water (whether in point of quantity, pressure, quality, means of supply or otherwise); or
    - (iv) the filtration or other treatment of water;
  - (e) provision authorising the [<sup>F191</sup>appropriate agency] to suspend or vary, or attach conditions to, any [<sup>F193</sup>environmental permit] specified in the order for the discharge of any effluent by any person, including any sewerage undertaker or water undertaker.
- (2) An ordinary drought order made on the application of a water undertaker may contain any of the following provisions, that is to say—
- (a) provision authorising the water undertaker to take water from any source specified in the order subject to any conditions or restrictions so specified;
  - (b) provision authorising the water undertaker to prohibit or limit the use of water for any purpose specified in the order, being a purpose for the time being set out in a direction given by the Secretary of State to water undertakers generally as a purpose which may be specified by virtue of this paragraph in any ordinary drought order;
  - (c) provision authorising the water undertaker to discharge water to any place specified in the order subject to any conditions or restrictions so specified;
  - (d) provision authorising the [<sup>F191</sup>appropriate agency] to prohibit or limit the taking by any person of water from a source specified in the order if the [<sup>F191</sup>appropriate agency] is satisfied that the taking of water from that source seriously affects the supplies available to the water undertaker;
  - (e) provision prohibiting or limiting the taking by the [<sup>F191</sup>appropriate agency] of water from a source specified in the order if the taking of water from that source is determined, in accordance with provision made by the order, seriously to affect the supplies available to the water undertaker;
  - (f) provision suspending or modifying, subject to any conditions specified in the order, any restriction or obligation to which the water undertaker or any sewerage undertaker or other person is subject as respects—
    - (i) the taking of water from any source;
    - (ii) the discharge of water;
    - (iii) the supply of water (whether in point of quantity, pressure, quality, means of supply or otherwise); or
    - (iv) the filtration or other treatment of water;
  - (g) provision authorising the [<sup>F191</sup>appropriate agency] to suspend or vary, or attach conditions to, any [<sup>F194</sup>environmental permit] specified in the order for the discharge of any effluent by any person, including the company which applied for the order (whether in the capacity in which it made the application, in its capacity as a sewerage undertaker or in any other capacity).
- (3) The period for which—
- (a) an authorisation given by or under an ordinary drought order;
  - (b) a prohibition or limitation imposed by or under any such order; or

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- (c) a suspension or modification effected by or under any such order, has effect shall expire before the end of the period of six months beginning with the day on which the order comes into force, unless that period of six months is extended, in relation to that order, by virtue of the exercise by the Secretary of State of his power (subject to subsection (4) below) to amend the order.
- (4) The power of the Secretary of State to amend an ordinary drought order shall not be exercised so as to extend the period of six months mentioned in subsection (3) above beyond the end of the period of one year beginning with the day on which that order came into force.
- (5) Without prejudice to the following provisions of this Chapter, an ordinary drought order may—
- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

#### **Textual Amendments**

- F191** Words in ss. 73-75 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(n)** (with Sch. 7)
- F193** Words in s. 74(1)(e) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(3)(a)** (with reg. 1(2), Sch. 4)
- F194** Words in s. 74(2)(g) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(3)(a)** (with reg. 1(2), Sch. 4)

## **75 Provisions and duration of emergency drought order.**

- (1) An emergency drought order made on the application of the [<sup>F191</sup>appropriate agency] may contain any of the provisions which could be included, by virtue of section 74(1) above, in an ordinary drought order made on the application of the [<sup>F191</sup>appropriate agency].
- (2) An emergency drought order made on the application of a water undertaker may contain any of the following provisions, that is to say—
- (a) any provision which could be included, by virtue of subsection (2) of section 74 above, in an ordinary drought order made on the application of a water undertaker, except provision authorised by paragraph (b) of that subsection;
  - (b) provision authorising the water undertaker to prohibit or limit the use of water for such purposes as the water undertaker thinks fit;
  - (c) provision authorising the water undertaker—
    - (i) to supply water in its area, or in any place within its area, by means of stand-pipes or water tanks; and
    - (ii) to erect or set up and maintain stand-pipes or water tanks in any street in that area.
- (3) The period for which—
- (a) an authorisation given by or under an emergency drought order;
  - (b) a prohibition or limitation imposed by or under any such order; or



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- (c) a suspension or modification effected by or under any such order, has effect shall expire before the end of the period of three months beginning with the day on which the order comes into force unless that period of three months is extended, in relation to that order, by virtue of the exercise by the Secretary of State of his power (subject to subsection (4) below) to amend the order.
- (4) The power of the Secretary of State to amend an emergency drought order shall not be exercised so as to extend the period of three months mentioned in subsection (3) above beyond the end of the period of five months beginning with the day on which that order came into force.
- (5) Where powers have been conferred by an emergency drought order on any person—
- (a) the Secretary of State may give to that person such directions as he considers necessary or expedient as to the manner in which, or the circumstances in which, any of those powers is or is not to be exercised;
  - (b) it shall be the duty of that person to comply with any such direction; and
  - (c) where that person is a water undertaker or sewerage undertaker, the duty to comply with any such direction shall be enforceable under section 18 of the <sup>M17</sup>Water Industry Act 1991 by the Secretary of State.
- (6) The giving of a direction under subsection (5) above in relation to any power shall not affect—
- (a) the validity of anything done in the exercise of that power before the giving of the direction; or
  - (b) any obligation or liability incurred before the giving of the direction.
- (7) Without prejudice to the following provisions of this Chapter, an emergency drought order may—
- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

#### Textual Amendments

**F191** Words in ss. 73-75 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(n)** (with Sch. 7)

#### Marginal Citations

**M17** 1991 c. 56.

## 76 Provisions of drought order restricting use of water.

- (1) The following provisions apply where a drought order contains a provision authorising a water undertaker to prohibit or limit the use of water, that is to say—
- (a) the power may be exercised in relation to consumers generally, a class of consumer or a particular consumer;
  - (b) the water undertaker shall take such steps as it thinks appropriate for bringing the prohibition or limitation to the attention of the persons to whom the prohibition or limitation will apply and, in particular, shall (as the undertaker thinks appropriate)—

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- (i) cause notice of the prohibition or limitation to be published in one or more local newspapers circulating within that part of the water undertaker's area which would be affected by the provision of the order; or
  - (ii) send notice of the prohibition or limitation to the persons to whom the prohibition or limitation will apply;
  - (c) the prohibition or limitation shall not come into operation until the end of the period of seventy-two hours beginning with the day on which the notice is published or, as the case may be, sent to the person in question.
- (2) The Secretary of State may revoke or vary any direction given by him for the purposes of section 74(2)(b) above by a further direction for those purposes.
- (3) Where any purpose set out in a direction given for the purposes of section 74(2)(b) above will cease, by virtue of the variation or revocation of the direction, to be one which may be specified in an ordinary drought order, the Secretary of State shall (without an application having been made to him) exercise his power to vary or revoke ordinary drought orders, in so far as any orders in force will be affected by the variation or revocation of the direction, so as to make those orders conform to the variation or reflect the revocation.
- (4) The revocation or variation of a direction under subsection (3) above shall not affect either—
- (a) the validity of anything done in pursuance of an order before the giving of the further direction; or
  - (b) any obligation or liability accrued or incurred before the giving of the further direction.

## **77 Provisions of drought order with respect to abstractions and discharges.**

- (1) Any drought order which-
- (a) authorises the taking of water from a source from which water is supplied to an inland navigation; or
  - (b) suspends or modifies—
    - (i) a restriction as respects the taking of water from a source from which water is supplied to an inland navigation; or
    - (ii) an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation,
- may include provision for prohibiting or imposing limitations on the taking of water from the inland navigation or for the suspension or modification of any obligation to which a navigation authority are subject as respects the discharge of water from the inland navigation.
- (2) A prohibition or limitation by or under a drought order on the taking of water from any source may be imposed so as to have effect in relation to a source from which a person to whom the prohibition or limitation applies has a right to take water whether by virtue of an enactment or instrument, an agreement or the ownership of land.
- (3) Where a drought order made on the application of a water undertaker confers power on the [F195 appropriate agency]—
- (a) to prohibit or limit the taking of water from any source; or

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(b) to suspend or vary, or attach conditions to, any [<sup>F196</sup>environmental permit] for the discharge of any effluent,  
the [<sup>F195</sup>appropriate agency] shall exercise that power in such manner as will ensure, so far as reasonably practicable, that the supplies of water available to the water undertaker are not seriously affected.

<sup>F197</sup>(4) .....

(5) Where—

- (a) any drought order confers power on the [<sup>F195</sup>appropriate agency] to suspend or vary, or attach conditions to, any [<sup>F198</sup>environmental permit] for the discharge of any effluent; and
- (b) the [<sup>F195</sup>appropriate agency] exercises that power so as to restrict the discharge of effluent by a sewerage undertaker,

the sewerage undertaker may so modify any consents or agreements relating to the discharge by other persons of trade effluent as to enable it to comply with any requirements or conditions imposed on it by or under the order with respect to discharges from sewers or works of the undertaker.

(6) In this section—

“compensation water” means water which a water undertaker or the [<sup>F195</sup>appropriate agency] is under an obligation to discharge—

- (a) in accordance with the provisions of a licence under Chapter II of this Part into a source of supply; or
- (b) under any local statutory provision, into any river, stream, brook or other running water or into a canal;

and

“inland navigation” includes any canal or navigable river.

#### Textual Amendments

**F195** Words in ss. 77-79 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(o)** (with Sch. 7)

**F196** Words in s. 77(3)(b) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(3)(b)** (with reg. 1(2), Sch. 4)

**F197** S. 77(4) repealed (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 64(1), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, art. 3(o)(z)

**F198** Words in s. 77(5)(a) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(3)(b)** (with reg. 1(2), Sch. 4)

## 78 Works under drought orders.

- (1) A drought order may authorise the [<sup>F195</sup>appropriate agency] or a water undertaker, subject to any conditions and restrictions specified in the order, to carry out any works required for the performance of any duty or the exercise of any power which is imposed or conferred by or under the order.
- (2) A drought order authorising the [<sup>F195</sup>appropriate agency] or a water undertaker to carry out any works—
  - (a) may authorise the [<sup>F195</sup>appropriate agency] or that undertaker for that purpose to enter upon any land specified in the order and to occupy and use the land to

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- such extent and in such manner as may be requisite for the carrying out and maintenance of the works; and
- (b) may apply in relation to the carrying out of the works such of the provisions of Part VII of this Act or Part VI of the <sup>M18</sup>Water Industry Act 1991 as appear to the Secretary of State to be appropriate, subject to such modifications as may be specified in the order.
- (3) The Secretary of State shall include in any drought order authorising the [<sup>F195</sup>appropriate agency] or a water undertaker to enter any land provisions requiring the [<sup>F195</sup>appropriate agency] or that undertaker to give to the occupier of the land and to such other persons concerned with the land as may be specified in the order not less than twenty-four hours' notice of any intended entry.
- (4) Subject to subsection (3) above, a drought order may make any such provision in relation to provisions of the order authorising any person to enter any land as corresponds to provision having effect by virtue of section 173 below or to provision contained in Part II of Schedule 6 to the Water Industry Act 1991.
- (5) Any works to be carried out under the authority of an emergency drought order shall be included in the definition of emergency works in section 52 of the New Roads and Street Works Act 1991.
- (6) Until the coming into force of section 52 of the <sup>M19</sup>New Roads and Street Works Act 1991, subsection (5) above shall have effect as if the reference to that section were a reference to section 39(1) of the <sup>M20</sup>Public Utilities Street Works Act 1950; but nothing in this section shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing that section 52 into force on different days for different purposes (including the purposes of this section).

#### Textual Amendments

**F195** Words in ss. 77-79 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(o)** (with Sch. 7)

#### Marginal Citations

**M18** 1991 c. 56.  
**M19** 1991 c. 22.  
**M20** 1950 c. 39.

## 79 Compensation and charges where drought order made.

- (1) Schedule 9 to this Act shall have effect with respect to the payment of compensation where a drought order has been made.
- (2) Except as provided by Schedule 9 to this Act, neither the [<sup>F195</sup>appropriate agency] nor any water undertaker or sewerage undertaker shall incur any liability to any person for loss or damage sustained by reason of anything done in pursuance of any drought order or of any omission in pursuance of such an order.
- (3) Nothing in any drought order shall affect the right of the [<sup>F195</sup>appropriate agency], a water undertaker or a sewerage undertaker, in the event of an interruption or diminution of the supply of water, to recover any fixed or minimum charge which might have been recovered from any person by the [<sup>F195</sup>appropriate agency] or that undertaker if there had been no such interruption or diminution.

*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- [<sup>F199</sup>(4) Where a water undertaker makes an application for a drought order, the [<sup>F195</sup>appropriate agency] may recover from the water undertaker any expenses it incurs (whether of a revenue or capital nature)—
- (a) in connection with any local inquiry held in respect of the application;
  - (b) in the exercise of the [<sup>F195</sup>appropriate agency's] functions so far as their exercise is attributable to the application and (if the order is made) to the order, in so far as those expenses have not been recovered (whether from the water undertaker or not) under or by virtue of any other enactment.
- (5) Sections 125 to 129 below shall not apply in respect of any charges which may be made under subsection (4) above.]

#### Textual Amendments

**F195** Words in ss. 77-79 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 270(o)** (with Sch. 7)

**F199** S. 79(4)(5) added (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 64(2)**, 105(3); S.I. 2004/641, art. 3(o) (with Sch. 3 para. 7)

#### [<sup>F200</sup>79A Drought permits.

- (1) If the [<sup>F201</sup>appropriate agency] is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened then, subject to the following provisions of this section, it may, upon the application of a water undertaker which supplies water to premises in that area, issue to that undertaker a drought permit making such provision authorised by this section as appears to the [<sup>F201</sup>appropriate agency] to be expedient with a view to meeting the deficiency.
- (2) A drought permit may contain any of the following provisions, that is to say—
- (a) provision authorising the water undertaker to which it is issued to take water from any source specified in the permit subject to any conditions or restrictions so specified;
  - (b) provision suspending or modifying, subject to any conditions specified in the permit, any restriction or obligation to which that undertaker is subject as respects the taking of water from any source.
- (3) A drought permit shall specify—
- (a) the day on which it comes into force; and
  - (b) the period for which, subject to subsections (4) and (5) below, any authorisation given, or suspension or modification effected, by the permit is to have effect.
- (4) Subject to subsection (5) below, the period for which—
- (a) an authorisation given by a drought permit, or
  - (b) a suspension or modification effected by such a permit,
- has effect shall expire before the end of the period of six months beginning with the day on which the permit comes into force.
- (5) At any time before the expiration of the period for which such an authorisation, suspension or modification has effect, the [<sup>F201</sup>appropriate agency] may, by giving notice to the water undertaker to which the permit in question was issued, extend that

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period, but not so as to extend it beyond the end of the period of one year beginning with the day on which the permit came into force.

- (6) A drought permit which—
  - (a) authorises the taking of water from a source from which water is supplied to an inland navigation; or
  - (b) suspends or modifies—
    - (i) a restriction as respects the taking of water from a source from which water is supplied to an inland navigation; or
    - (ii) an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation,

shall not be issued without the consent of every navigation authority exercising functions over any or all of the parts of the canal or inland navigation in question which are affected by the permit.

- (7) Schedule 8 to this Act shall have effect with respect to the procedure on an application for a drought permit as it has effect with respect to the procedure on an application for a drought order, but with the following modifications, that is to say—
  - (a) with the substitution for any reference to a drought order of a reference to a drought permit;
  - (b) with the substitution for any reference to the Secretary of State of a reference to the [F201appropriate agency];
  - F202(c) .....
  - (d) with the insertion, in paragraph 1(3)(c), of a requirement that the notice in question shall specify the address at which any objections are to be made to the [F201appropriate agency]; and
  - (e) with the omission—
    - (i) of paragraph 2(1)(a) and the word “either” immediately preceding it, and
    - (ii) of paragraph 2(6).

F203(8) .....

[ Where a water undertaker makes an application for a drought permit, the F204(8A) [F201appropriate agency] may recover from the water undertaker any expenses it incurs (whether of a revenue or capital nature) in the exercise of its functions so far as their exercise is attributable to—

- (a) the application;
- (b) (if the permit is issued) the permit,

in so far as those expenses have not been recovered (whether from the water undertaker or not) under or by virtue of any other enactment.

(8B) Sections 125 to 129 below shall not apply in respect of any charges which may be made under subsection (8A) above.]

(9) Section 79 above and Schedule 9 to this Act shall apply in relation to drought permits and their issue as they apply in relation to ordinary drought orders and their making.

- (10) A drought permit may—
  - (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and

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- (b) contain such supplemental, consequential and transitional provisions as the [F201 appropriate agency] considers appropriate.

(11) In this section—

- “compensation water” has the same meaning as in section 77 above;  
“drought permit” means a drought permit under this section;  
“inland navigation” has the same meaning as in section 77 above.]

#### Textual Amendments

- F200** S. 79A inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 140** (with 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F201** Words in s. 79A substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 271(2)** (with Sch. 7)
- F202** S. 79A(7)(c) omitted (1.4.2013) by virtue of The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 271(3)** (with Sch. 7)
- F203** S. 79A(8) repealed (1.4.2004) by Water Act 2003 (c. 37), ss. 64(3)(a), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 3(o)(z)**
- F204** S. 79A(8A)(8B) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 64(3)(b), 105(3); S.I. 2004/641, **art. 3(o)** (with Sch. 3 para. 7)

## 80 Offences against drought order.

(1) If any person—

- (a) takes or uses water in contravention of a prohibition or limitation imposed by or under any drought order or takes or uses water otherwise than in accordance with any condition or restriction [F205 imposed by or under any drought order or by any drought permit]; or
- (b) discharges water otherwise than in accordance with any condition or restriction imposed by or under such an order,

he shall be guilty of an offence under this section.

(2) If any person—

- (a) fails to construct or maintain in good order a gauge, weir or other apparatus for measuring the flow of water which he was required to construct or maintain by any drought order [F206 or drought permit]; or
- (b) fails to allow some person authorised for the purpose by or under any such order [F207 or by virtue of any such permit] to inspect and examine any such apparatus or any records made thereby or kept by that person in connection therewith or to take copies of any such records,

he shall be guilty of an offence under this section.

(3) In any proceedings against any person for an offence under this section it shall be a defence for that person to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(4) A person who is guilty of an offence under this section shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine.

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### Textual Amendments

- F205** Words in s. 80(1)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 141(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F206** Words in s. 80(2)(a) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 141(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F207** Words in s. 80(2)(b) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 141(c)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

## 81 Interpretation of Chapter III.

In this Chapter—

- (a) references to the taking of water include references to the collection, impounding, diversion or appropriation of water; and
- (b) references to an obligation or to a restriction include references to an obligation or, as the case may be, to a restriction which is imposed by or under any enactment or agreement.

## PART III

### CONTROL OF POLLUTION OF WATER RESOURCES

### Modifications etc. (not altering text)

- C89** Pt. III (ss. 82-104) modified (subject to other provisions of the amending Act) (1.2.1996) by 1995 c. 25, s. 5(5)(g) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 2
- C90** Pt. III (ss. 82-104): functions transferred to the Environment Agency (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 2(1)(a)(ii) (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- C91** Pt. III: definition of “controlled waters” applied (1.12.1991) by water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(1), 4(2), **Sch. 1 para. 1**

## CHAPTER I

### QUALITY OBJECTIVES

## 82 Classification of quality of waters.

- (1) The Secretary of State may, in relation to any description of controlled waters (being a description applying to some or all of the waters of a particular class or of two or more different classes), by regulations prescribe a system of classifying the quality of those waters according to criteria specified in the regulations.
- (2) The criteria specified in regulations under this section in relation to any classification shall consist of one or more of the following, that is to say—
  - (a) general requirements as to the purposes for which the waters to which the classification is applied are to be suitable;



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- (b) specific requirements as to the substances that are to be present in or absent from the water and as to the concentrations of substances which are or are required to be present in the water;
  - (c) specific requirements as to other characteristics of those waters;
- and for the purposes of any such classification regulations under this section may provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed.

**Modifications etc. (not altering text)**

- C92** S. 82 modified (1.7.1999) by S.I. 1999/672, art. 5, **Sch. 2**
- C93** S. 82 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. 1 para.9** (with s. 46).
- C94** S. 82 modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011](#) (S.I. 2011/2043), reg. 1(b), **Sch. 1**)
- C95** S. 82 modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016](#) (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

**83 Water quality objectives.**

- (1) For the purpose of maintaining and improving the quality of controlled waters the Secretary of State may, by serving a notice on the [<sup>F208</sup>appropriate agency] specifying—
  - (a) one or more of the classifications for the time being prescribed under section 82 above; and
  - (b) in relation to each specified classification, a date, establish the water quality objectives for any waters which are, or are included in, waters of a description prescribed for the purposes of that section.
- (2) The water quality objectives for any waters to which a notice under this section relates shall be the satisfaction by those waters, on and at all times after each date specified in the notice, of the requirements which at the time of the notice were the requirements for the classification in relation to which that date is so specified.
- (3) Where the Secretary of State has established water quality objectives under this section for any waters he may review objectives for those waters if—
  - (a) five years or more have elapsed since the service of the last notice under subsection (1) or (6) of this section to be served in respect of those waters; or
  - (b) the [<sup>F208</sup>appropriate agency], after consultation with such water undertakers and other persons as it considers appropriate, requests a review;and the Secretary of State shall not exercise his power to establish objectives for any waters by varying the existing objectives for those waters except in consequence of such a review.
- (4) Where the Secretary of State proposes to exercise his power under this section to establish or vary the objectives for any waters he shall—
  - (a) give notice setting out his proposal and specifying the period (not being less than three months from the date of publication of the notice) within which representations or objections with respect to the proposal may be made; and
  - (b) consider any representations or objections which are duly made and not withdrawn;

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and, if he decides, after considering any such representations or objections, to exercise his power to establish or vary those objectives, he may do so either in accordance with the proposal contained in the notice or in accordance with that proposal as modified in such manner as he considers appropriate.

- (5) A notice under subsection (4) above shall be given—
- (a) by publishing the notice in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by it; and
  - (b) by serving a copy of the notice on the [F208 appropriate agency].
- (6) If, on a review under this section or in consequence of any representations or objections made following such a review for the purposes of subsection (4) above, the Secretary of State decides that the water quality objectives for any waters should remain unchanged, he shall serve notice of that decision on the [F208 appropriate agency].

#### Textual Amendments

**F208** Words in s. 83 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 272](#) (with Sch. 7)

#### Modifications etc. (not altering text)

- C96** S. 83 amended (20.3.1992) by [S.I. 1992/337](#), [reg. 4](#)
- C97** S. 83 applied (with modifications) (6.1.1997) by [S.I. 1996/3001](#), [reg. 7\(1\)](#)  
 S. 83 applied (with modifications) (26.11.1997) by [S.I. 1997/2560](#), [reg. 5](#)
- C98** S. 83 modified (12.6.1997) by [S.I. 1997/1331](#), [reg. 6\(1\)](#)  
 S. 83 modified (12.6.1997) by [S.I. 1997/1332](#), [reg. 6\(1\)](#)  
 S. 83 modified (25.3.1998) by [S.I. 1998/389](#), [reg. 5](#)

## 84 General duties to achieve and maintain objectives etc.

- (1) It shall be the duty of the Secretary of State and of the [F209 appropriate agency] to exercise the powers conferred on him or it by or under the water pollution provisions of this Act (other than the preceding provisions of this Chapter and sections 104 and 192 below) [F210 and by the Environmental Permitting Regulations] in such manner as ensures, so far as it is practicable by the exercise of those powers to do so, that the water quality objectives specified for any waters in—
- (a) a notice under section 83 above; or
  - (b) a notice under section 30C of the <sup>M21</sup>Control of Pollution Act 1974 (which makes corresponding provision for Scotland),
- are achieved at all times.
- (2) It shall be the duty of the [F211 appropriate agency], for the purposes of the carrying out of its functions under the water pollution provisions of this Act [F212 or under the Environmental Permitting Regulations] —
- (a) to monitor the extent of pollution in controlled waters; <sup>F213</sup>...
  - [F214 (aa) in the case of the NRBW, to consult, in such cases as it may consider appropriate, with the Agency; and]

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- (b) [<sup>F215</sup>in the case of the Agency,] to consult, in such cases as it may consider appropriate, with [<sup>F216</sup>the Scottish Environment Protection Agency][<sup>F217</sup>or with the NRW].

#### Textual Amendments

- F209** Words in s. 84(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 273(2)** (with Sch. 7)
- F210** Words in s. 84(1) inserted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(4)(a)** (with reg. 1(2), Sch. 4)
- F211** Words in s. 84(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 273(3)(a)** (with Sch. 7)
- F212** Words in s. 84(2) inserted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(4)(b)** (with reg. 1(2), Sch. 4)
- F213** Word in s. 84(2)(a) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 273(3)(b)** (with Sch. 7)
- F214** S. 84(2)(aa) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 273(3)(c)** (with Sch. 7)
- F215** Words in s. 84(2)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 273(3)(d)(i)** (with Sch. 7)
- F216** Words in s. 84(2)(b) substituted (S.) (1.4.1996) by S.I. 1996/973, reg. 2, **Sch. para. 11**
- F217** Words in s. 84(2)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 273(3)(d)(ii)** (with Sch. 7)

#### Modifications etc. (not altering text)

- C99** S. 84 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).
- C100** S. 84 modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)
- C101** S. 84 modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

#### Marginal Citations

- M21** 1974 c. 40.

## CHAPTER II

### POLLUTION OFFENCES

#### Modifications etc. (not altering text)

- C102** Pt. III Chapter II (ss. 85-91) amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para. 11**

#### *Principal offences*

### <sup>F218</sup>85 Offences of polluting controlled waters.

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**Textual Amendments**

**F218** S. 85 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(a), **Sch. 28** (with reg. 1(2), Sch. 4)

**<sup>F219</sup>86 Prohibition of certain discharges by notice or regulations.**

.....

**Textual Amendments**

**F219** S. 86 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(b), **Sch. 28** (with reg. 1(2), Sch. 4)

**<sup>F220</sup>87 Discharges into and from public sewers etc.**

.....

**Textual Amendments**

**F220** S. 87 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(c), **Sch. 28** (with reg. 1(2), Sch. 4)

**<sup>F221</sup>88 Defence to principal offences in respect of authorised discharges.**

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**Textual Amendments**

**F221** S. 88 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(d), **Sch. 28** (with regs. 1(2), 109(3), Sch. 4)

**<sup>F222</sup>89 Other defences to principal offences.**

.....

**Textual Amendments**

**F222** S. 89 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(e), **Sch. 28** (with reg. 1(2), Sch. 4)

*Offences in connection with deposits and vegetation in rivers*

**<sup>F223</sup>90 Offences in connection with deposits and vegetation in rivers.**

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*Status: Point in time view as at 17/09/2018.*

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**Textual Amendments**

**F223** S. 90 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(f), **Sch. 28** (with reg. 1(2), Sch. 4)

*Consents for the purposes of sections 88 to 90*

**F224** **90A Applications for consent under section 89 or 90.**

.....

**Textual Amendments**

**F224** S. 90A repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(g), **Sch. 28** (with reg. 1(2), Sch. 4)

**F225** **90B Enforcement notices.**

.....

**Textual Amendments**

**F225** S. 90B repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(h), **Sch. 28** (with reg. 1(2), Sch. 4)

*Appeals in respect of consents under Chapter II*

**F226** **91 Appeals in respect of consents under Chapter II.**

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**Textual Amendments**

**F226** S. 91 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(i), **Sch. 28** (with reg. 1(2), Sch. 4)

**[<sup>F227</sup> CHAPTER IIA**

**ABANDONED MINES**

**Textual Amendments**

**F227** Chapter IIA (ss. 91A-91B) inserted (subject to other provisions of the amending Act) (21.9.1995 for certain purposes and 1.7.1998 otherwise) by [1995 c. 25, s. 58](#) (with ss. 7(6), 115, 117); [S.I. 1995/1983, art. 3](#) (with art. 4); [S.I. 1998/604, art. 3](#)

*Status: Point in time view as at 17/09/2018.*

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## <sup>F228</sup>91A Introductory.

- (1) For the purposes of this Chapter, “abandonment”, in relation to a mine,—
- (a) subject to paragraph (b) below, includes—
    - (i) the discontinuance of any or all of the operations for the removal of water from the mine;
    - (ii) the cessation of working of any relevant seam, vein or vein-system;
    - (iii) the cessation of use of any shaft or outlet of the mine;
    - (iv) in the case of a mine in which activities other than mining activities are carried on (whether or not mining activities are also carried on in the mine)—
      - (A) the discontinuance of some or all of those other activities in the mine; and
      - (B) any substantial change in the operations for the removal of water from the mine; but
  - (b) does not include—
    - (i) any disclaimer under section 178 or 315 of the <sup>M22</sup>Insolvency Act 1986 (power of liquidator, or trustee of a bankrupt’s estate, to disclaim onerous property) by the official receiver acting in a compulsory capacity; or
    - (ii) the abandonment of any rights, interests or liabilities by the Accountant in Bankruptcy acting as [<sup>F229</sup>trustee] or interim trustee in a sequestration (within the meaning of the <sup>M23</sup>Bankruptcy (Scotland) Act [<sup>F230</sup>2016]);
- and cognate expressions shall be construed accordingly.
- (2) In this Chapter, except where the context otherwise requires—
- “the 1954 Act” means the <sup>M24</sup>Mines and Quarries Act 1954;
- “acting in a compulsory capacity”, in the case of the official receiver, means acting as—
- (a) liquidator of a company;
  - (b) receiver or manager of a bankrupt’s estate, pursuant to section 287 of the <sup>M25</sup>Insolvency Act 1986;
  - (c) trustee of a bankrupt’s estate;
  - (d) liquidator of an insolvent partnership;
  - (e) trustee of an insolvent partnership;
  - (f) trustee, or receiver or manager, of the insolvent estate of a deceased person;
- “mine” has the same meaning as in the 1954 Act;
- “the official receiver” has the same meaning as it has in the <sup>M26</sup>Insolvency Act 1986 by virtue of section 399(1) of that Act;
- “prescribed” means prescribed in regulations;
- “regulations” means regulations made by the Secretary of State;
- “relevant seam, vein or vein-system”, in the case of any mine, means any seam, vein or vein-system for the purpose of, or in connection with, whose working any excavation constituting or comprised in the mine was made.

*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F228** Chapter IIA (ss. 91A-91B) inserted (subject to other provisions of the amending Act) (21.9.1995 for certain purposes and 1.7.1998 otherwise) by 1995 c. 25, s. 58 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3 (with art. 4); S.I. 1998/604, art. 3
- F229** Word in s. 91A(1)(b)(ii) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 8(2)(a)
- F230** Word in s. 91A(1)(b)(ii) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 8(2)(b)

#### Marginal Citations

- M22** 1986 c. 45.  
**M23** 1985 c. 66.  
**M24** 1954 c. 70.  
**M25** 1986 c. 45.  
**M26** 1986 c. 45.

### **91B Mine operators to give the [<sup>F231</sup>appropriate agency] six months' notice of any proposed abandonment.**

- (1) If, in the case of any mine, there is to be an abandonment at any time after the expiration of the initial period, it shall be the duty of the operator of the mine to give notice of the proposed abandonment to the [<sup>F231</sup>appropriate agency] at least six months before the abandonment takes effect.
- (2) A notice under subsection (1) above shall contain such information (if any) as is prescribed for the purpose, which may include information about the operator's opinion as to any consequences of the abandonment.
- (3) A person who fails to give the notice required by subsection (1) above shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (4) A person shall not be guilty of an offence under subsection (3) above if—
  - (a) the abandonment happens in an emergency in order to avoid danger to life or health; and
  - (b) notice of the abandonment, containing such information as may be prescribed, is given as soon as reasonably practicable after the abandonment has happened.
- (5) Where the operator of a mine is—
  - (a) the official receiver acting in a compulsory capacity, or
  - (b) the Accountant in Bankruptcy acting as [<sup>F232</sup>trustee] or interim trustee in a sequestration (within the meaning of the <sup>M27</sup>Bankruptcy (Scotland) Act [<sup>F233</sup>2016]),

he shall not be guilty of an offence under subsection (3) above by reason of any failure to give the notice required by subsection (1) above if, as soon as reasonably practicable (whether before or after the abandonment), he gives to the [<sup>F231</sup>appropriate agency] notice of the abandonment or proposed abandonment, containing such information as may be prescribed.

*Status: Point in time view as at 17/09/2018.*

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- (6) Where a person gives notice under subsection (1), (4)(b) or (5) above, he shall publish prescribed particulars of, or relating to, the notice in one or more local newspapers circulating in the locality where the mine is situated.
- (7) Where the [<sup>F231</sup>appropriate agency]—
- (a) receives notice under this section or otherwise learns of an abandonment or proposed abandonment in the case of any mine, and
  - (b) considers that, in consequence of the abandonment or proposed abandonment taking effect, any land has or is likely to become contaminated land, within the meaning of Part IIA of the <sup>M28</sup>Environmental Protection Act 1990,
- it shall be the duty of the [<sup>F231</sup>appropriate agency] to inform the local authority in whose area that land is situated of the abandonment or proposed abandonment.
- (8) In this section—
- “the initial period” means the period of six months beginning with the day on which subsection (1) above comes into force;
- “local authority” means—
- (a) any unitary authority;
  - (b) any district council, so far as it is not a unitary authority;
  - (c) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;
- “unitary authority” means—
- (a) the council of a county, so far as it is the council of an area for which there are no district councils;
  - (b) the council of any district comprised in an area for which there is no county council;
  - (c) the council of a London borough;
  - (d) the council of a county borough in Wales.]

#### Textual Amendments

- F231** Words in s. 91B and heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 274(a)** (with Sch. 7)
- F232** Word in s. 91B(5)(b) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 8(3)(a)**
- F233** Word in s. 91B(5)(b) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 8(3)(b)**

#### Marginal Citations

- M27** 1985 c. 66.  
**M28** 1990 c. 43.



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## CHAPTER III

### POWERS TO PREVENT AND CONTROL POLLUTION

#### 92 Requirements to take precautions against pollution.

- (1) The Secretary of State may by regulations make provision—
- (a) 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 or controlling the entry of the matter into any controlled waters;
  - (b) 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—
- (a) confer power on the [<sup>F234</sup>appropriate agency]—
    - (i) to determine for the purposes of the regulations the circumstances in which a person is required to carry out works or to take any precautions or other steps; and
    - (ii) 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;
  - (b) provide for appeals to the Secretary of State against notices served by the [<sup>F234</sup>appropriate agency] in pursuance of provision made by virtue of paragraph (a) above; and
  - (c) provide that a contravention of the regulations shall be an offence the maximum penalties for which shall not exceed the penalties specified in [<sup>F235</sup>regulation 39(1) of the Environmental Permitting Regulations].

[<sup>F236</sup>(3) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).]

#### Textual Amendments

- F234** Words in ss. 92-97 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 274\(a\)](#) (with [Sch. 7](#))
- F235** Words in s. 92(2)(c) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), [reg. 1\(1\)\(b\)](#), [Sch. 26 para. 8\(5\)](#) (with [reg. 1\(2\)](#), [Sch. 4](#))
- F236** S. 92(3) added (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 144](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3](#) (with [art. 4](#))

#### Modifications etc. (not altering text)

- C103** S. 92 amended (27.8.1993) by [1993 c. 12, ss. 40, 51\(2\)](#), [Sch. 3 Pt. I para. 9](#) (with [s. 46](#)).
- C104** S. 92: power to delegate functions conferred (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 114\(2\)\(a\)\(v\)](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3](#) (with [art. 4](#))
- C105** S. 92 modified by [S.I. 2010/675](#), [Sch. 23 Pt. 8 para. 3 Table 9](#) (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), [reg. 1\(b\)](#), [Sch. 1](#))

*Status: Point in time view as at 17/09/2018.*

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**C106** S. 92 modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016](#) (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

### 93 Water protection zones.

[<sup>F237</sup>(1) Where the appropriate national authority considers that either or both of subsections (2) and (2A) is satisfied in relation to any area, it may by order make provision—

- (a) designating that area as a water protection zone; and
- (b) regulating the carrying on in that zone of such activities as may be specified or described in the order.]

[<sup>F238</sup>(1A) An order under this section may regulate activities carried on in a water protection zone by—

- (a) prohibiting or restricting the carrying on of those activities in the zone; or
- (b) imposing requirements on persons who carry on those activities in the zone to take such steps as may be specified or described in the order.

(1B) The power under subsection (1A)(b) is exercisable only for the purpose of enabling the United Kingdom to comply with its obligations under the Water Framework Directive in relation to any applicable environmental objectives.]

(2) For the purposes of subsection (1) above this subsection is satisfied in relation to any area if <sup>F239</sup>... it is appropriate, with a view to preventing or controlling the entry of any poisonous, noxious or polluting matter into controlled waters, to prohibit or restrict the carrying on in that area of activities which the [<sup>F240</sup>appropriate national authority] considers are likely to result in the pollution of any such waters.

[<sup>F241</sup>(2A) For the purposes of subsection (1) this subsection is satisfied in relation to any area if it is appropriate, with a view to preventing or limiting any harm that is being or is likely to be caused to controlled waters, to regulate the carrying on in that area of activities which the appropriate national authority considers are likely to result in such harm.

(2B) In subsection (2A) “harm” means any adverse impact on the condition of any hydromorphological quality element affecting the controlled waters that would be likely to prevent the achievement of any environmental objectives applicable to those waters (whether by itself or in combination with other factors), other than an adverse impact caused by the entry into controlled waters of any poisonous, noxious or polluting matter.

(2C) In subsection (2B) “environmental objectives” and “hydromorphological quality element” have the same meaning as in the Water Framework Directive.]

<sup>F242</sup>(3) .....

(4) Without prejudice to the generality of the power conferred by virtue of subsection (1) above, an order under this section may—

[<sup>F243</sup>(a) confer power on the [<sup>F234</sup>appropriate agency] to determine for the purposes of the order—

- (i) the circumstances in which the carrying on of any activities is prohibited or restricted;
- (ii) the circumstances in which any requirement to take steps is imposed on persons who carry on activities;

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- (iii) the activities to which any such prohibition or restriction or any such requirement (as the case may be) applies.]
- (b) apply a prohibition or restriction in respect of any activities to cases where the activities are carried on without the consent of the [<sup>F234</sup>appropriate agency] or in contravention of any conditions subject to which any such consent is given;
- [<sup>F244</sup>(c) provide that a contravention of a prohibition or restriction contained in the order or of a condition of a consent given for the purposes of any such prohibition or restriction or a failure to comply with a requirement to take steps contained in the order shall be an offence;]
- (d) provide (subject to any regulations under section 96 below) for anything falling to be determined under the order by the [<sup>F234</sup>appropriate agency] 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;
- (e) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (f) contain such supplemental, consequential and transitional provision as the [<sup>F245</sup>appropriate national authority] considers appropriate.
- [<sup>F246</sup>(4A) The maximum penalties for an offence created by subsection 4(c) shall not exceed—
- (a) on summary conviction, a term of imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum (or both); and
- (b) on conviction on indictment, imprisonment for a term not exceeding two years or a fine (or both).]
- [<sup>F247</sup>(5) In this section, “appropriate national authority” means—
- (a) in relation to England, the Secretary of State; and
- (b) in relation to Wales, the Welsh Ministers.
- (6) The power to make an order under this section shall be exercisable by statutory instrument subject—
- (a) in the case of an order made by the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament; and
- (b) in the case of an order made by the Welsh Ministers, to annulment in pursuance of a resolution of the National Assembly for Wales,
- but neither the Secretary of State nor the Welsh Ministers shall make such an order except on an application made by the [<sup>F234</sup>appropriate agency] in accordance with Schedule 11 to this Act and otherwise in accordance with that Schedule.
- (7) In this section—
- “England” includes the territorial sea adjacent to England not forming any part of Wales and “Wales” has the meaning given by section 158(1) of the Government of Wales Act 2006;
- “the Water Framework Directive” means Directive [2000/60/EC](#) of the European Parliament and of the Council establishing a framework for Community action in the field of water policy [<sup>F248</sup>, as last amended by Commission [Directive 2014/101/EU](#)].]

#### Textual Amendments

**F234** Words in ss. 92-97 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 274\(a\)](#) (with [Sch. 7](#))

*Status: Point in time view as at 17/09/2018.*

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- F237** S. 93(1) substituted (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(2)** (with reg. 7)
- F238** S. 93(1A) inserted (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(3)** (with reg. 7)
- F239** Words in s. 93(2) repealed (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(4)(a)** (with reg. 7)
- F240** Words in s. 93(2) substituted (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(4)(b)** (with reg. 7)
- F241** S. 93(2A)-(2C) inserted (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(5)** (with reg. 7)
- F242** S. 93(3) repealed (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(6)** (with reg. 7)
- F243** S. 93(4)(a) substituted (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(7)** (with reg. 7)
- F244** S. 93(4)(c) substituted (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(8)** (with reg. 7)
- F245** Words in s. 93(4)(f) substituted (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(9)** (with reg. 7)
- F246** S. 93(4A) inserted (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(10)** (with reg. 7)
- F247** S. 93(5)-(7) substituted for s. 93(5) (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **3(11)** (with reg. 7)
- F248** Words in s. 93(7) inserted (17.9.2018) by The Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) Regulations 2018 (S.I. 2018/942), regs. 1(2), **29**

**Modifications etc. (not altering text)**

- C107** S. 93 extended (01.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(2), 4(2), **Sch. 2 Pt. I para. 4(3)**.
- C108** S. 93 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).
- C109** S. 93 modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), reg. 1(b), **Sch. 1**)
- C110** S. 93 modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

**F249** **94 Nitrate sensitive areas.**

.....

**Textual Amendments**

- F249** S. 94 repealed (22.12.2009) by Water Resources Act 1991 (Amendment) (England and Wales) Regulations 2009 (S.I. 2009/3104), regs. 1(c), **4** (with reg. 7)

**F250** **95 Agreements in nitrate sensitive areas.**

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#### Textual Amendments

- F250** S. 95 repealed (22.12.2009) by [Water Resources Act 1991 \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/3104\)](#), regs. 1(c), 4 (with reg. 7)

### 96 Regulations with respect to consents required by virtue of section 93 or 94.

- (1) The Secretary of State may, for the purposes of any orders under section 93 above which require the consent of the [<sup>F234</sup>appropriate agency] to the carrying on of any activities, 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) appeals against determinations on any such application;
  - (e) the exercise by the Secretary of State of any power conferred on the [<sup>F234</sup>appropriate agency] by the orders;
  - (f) the imposition of charges where such an application has been made, such a consent has been given or anything has been done in pursuance of any such consent; and
  - (g) the registration of any such application or consent.

<sup>F251</sup>(2) .....

<sup>F252</sup>(3) .....

[<sup>F253</sup>(4) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).]

#### Textual Amendments

- F234** Words in ss. 92-97 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 274(a)** (with Sch. 7)
- F251** S. 96(2) repealed (22.12.2009) by [Water Resources Act 1991 \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/3104\)](#), regs. 1(c), 4 (with reg. 7)
- F252** S. 96(3) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(j), **Sch. 28** (with reg. 1(2), Sch. 4)
- F253** S. 96(4) added (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120\(1\), Sch. 22 para. 145](#) (with ss. 7(6), 115, 117); [S.I. 1996/186, art. 3](#) (with art. 4)

#### Modifications etc. (not altering text)

- C111** S. 96: power to delegate functions conferred (1.4.1996) by [1995 c. 25, s. 114\(2\)\(a\)\(v\)](#) (with ss. 7(6), 115, 117); [S.I. 1996/186, art. 3](#) (with art. 4)

### 97 Codes of good agricultural practice.

- (1) The Ministers may by order made by statutory instrument approve any code of practice issued (whether by either or both of the Ministers or by another person) for the purpose of—
- (a) giving practical guidance to persons engaged in agriculture with respect to activities that may affect controlled waters; and

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- (b) promoting what appear to them to be desirable practices by such persons for avoiding or minimising the pollution of any such waters,  
 and may at any time by such an order approve a modification of such a code or withdraw their approval of such a code or modification.
- (2) A contravention of a code of practice as for the time being approved under this section shall not of itself give rise to any criminal or civil liability, but the [<sup>F234</sup>appropriate agency] shall take into account whether there has been or is likely to be any such contravention in determining when and how it should exercise—
- [<sup>F254</sup>(a) its relevant functions, in relation to water discharge activities, under the Environmental Permitting Regulations;]
- (b) any powers conferred on the [<sup>F234</sup>appropriate agency] by regulations under section 92 above.
- (3) The Ministers shall not make an order under this section unless they have first consulted the [<sup>F234</sup>appropriate agency].

#### Textual Amendments

- F234** Words in ss. 92-97 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 274(a)** (with Sch. 7)
- F254** S. 97(2)(a) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(6)** (with reg. 1(2), Sch. 4)

## CHAPTER IV

### SUPPLEMENTAL PROVISIONS WITH RESPECT TO WATER POLLUTIONS

#### 98 Radioactive substances.

- (1) Except as provided by regulations made by the Secretary of State under this section, nothing in this Part shall apply in relation to radioactive waste within the meaning of [<sup>F255</sup>the Environmental Permitting Regulations].
- (2) The Secretary of State may by regulations—
- (a) provide for prescribed provisions of this Part to have effect with such modifications as he considers appropriate for dealing with such waste;
- (b) make such modifications of [<sup>F256</sup>the Environmental Permitting Regulations] or, in relation to such waste, of any other enactment as he considers appropriate in consequence of the provisions of this Part and of any regulations made by virtue of paragraph (a) above.

#### Textual Amendments

- F255** Words in s. 98(1) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(7)(a)** (with reg. 1(2), Sch. 4)
- F256** Words in s. 98(2) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(7)(b)** (with reg. 1(2), Sch. 4)

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**F257 99 Consents required by the Agency.**

.....

**Textual Amendments**

**F257** S. 99 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(k), **Sch. 28** (with reg. 1(2), Sch. 4)

**100 Civil liability in respect of pollution and savings.**

Except in so far as this Part expressly otherwise provides and subject to the provisions of section 18 of the <sup>M29</sup>Interpretation Act 1978 (which relates to offences under two or more laws), nothing in this Part—

- (a) confers a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of this Part or any subordinate legislation, consent or other instrument made, given or issued under this Part;
- (b) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part; or
- (c) affects any restriction imposed by or under any other enactment, whether public, local or private.

**Marginal Citations**

**M29** 1978 c. 30.

**101 Limitation for summary offences under Part III.**

Notwithstanding anything in section 127 of the <sup>M30</sup>Magistrates' Courts Act 1980 (time limit for summary proceedings), a magistrates' court may try any summary offence under this Part, or under any subordinate legislation made under this Part, if the information is laid not more than twelve months after the commission of the offence.

**Marginal Citations**

**M30** 1980 c. 43.

**102 Power to give effect to international obligations.**

The Secretary of State shall have power by regulations to provide that the water pollution provisions of this Act shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect—

- (a) to any [<sup>F258</sup>EU] obligations; or
- (b) to any international agreement to which the United Kingdom is for the time being a party.

*Status: Point in time view as at 17/09/2018.*

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#### Textual Amendments

**F258** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011](#) (S.I. 2011/1043), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

#### <sup>F259</sup>103 Transitional pollution provisions.

.....

#### Textual Amendments

**F259** S. 103 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010](#) (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(l), **Sch. 28** (with reg. 1(2), Sch. 4)

#### 104 Meaning of “controlled waters” etc. in Part III.

(1) References in this Part to controlled waters are references to waters of any of the following classes—

- (a) relevant territorial waters, that is to say, subject to subsection (4) below, the waters which extend seaward for three miles from the baselines from which the breadth of the territorial sea adjacent to England and Wales is measured;
- (b) coastal waters, that is to say, any waters which are within the area which extends landward from those baselines as far as—
  - (a) the limit of the highest tide; or
  - (b) in the case of the waters of any relevant river or watercourse, the fresh-water limit of the river or watercourse,
- (c) inland freshwaters, that is to say, the waters of any relevant lake or pond or of so much of any relevant river or watercourse as is above the fresh-water limit;
- (d) ground waters, that is to say, any waters contained in underground strata;

and, accordingly, in this Part “coastal waters”, “controlled waters”, “ground waters”, “inland freshwaters” and “relevant territorial waters” have the meanings given by this subsection.

(2) In this Part any reference to the waters of any lake or pond or of any river or watercourse includes a reference to the bottom, channel or bed of any lake, pond, river or, as the case may be, watercourse which is for the time being dry.

(3) In this section—

“fresh-water limit”, in relation to any river or watercourse, means the place for the time being shown as the fresh-water limit of that river or watercourse in the latest map deposited for that river or watercourse under section 192 below;

“miles” means international nautical miles of 1,852 metres;

“lake or pond” includes a reservoir of any description;

“relevant lake or pond” means (subject to subsection (4) below) any lake or pond which (whether it is natural or artificial or above or below ground) discharges into a relevant river or watercourse or into another lake or pond which is itself a relevant lake or pond;



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“relevant river or watercourse” means (subject to subsection (4) below) any river or watercourse (including an underground river or watercourse and an artificial river or watercourse) which is neither a public sewer nor a sewer or drain which drains into a public sewer.

- (4) The Secretary of State may by order provide—
- (a) that any area of the territorial sea adjacent to England and Wales is to be treated as if it were an area of relevant territorial waters for the purposes of this Part and of any other enactment in which any expression is defined by reference to the meanings given by this section;
  - (b) that any lake or pond which does not discharge into a relevant river or watercourse or into a relevant lake or pond is to be treated for those purposes as a relevant lake or pond;
  - (c) that a lake or pond which does so discharge and is of a description specified in the order is to be treated for those purposes as if it were not a relevant lake or pond;
  - (d) that a watercourse of a description so specified is to be treated for those purposes as if it were not a relevant river or watercourse.
- (5) An order under this section may—
- (a) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate; and
  - (b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities.
- (6) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

**Modifications etc. (not altering text)**

- C112** S. 104 definition of "controlled waters" applied by [London Docklands Railway Act 1991 \(c. xxiii\)](#), [s. 7\(2\)\(a\)](#)
- C113** S. 104(1) modified (12.6.1997) by [S.I. 1997/1331](#), [reg. 6\(2\)](#)  
S. 104(1) modified (12.6.1997) by [S.I. 1997/1332](#), [reg. 6\(2\)](#)
- C114** S. 104(1) modified (1.6.2003 for E.) by [Bathing Waters \(Classification\) \(England\) Regulations 2003 \(S.I. 2003/1238\)](#), [regs. 1, 2\(1\)](#)
- C115** S. 104(1)(c) applied (with modifications) (6.1.1997) by [S.I. 1996/3001](#), [reg. 7\(2\)](#)

**PART IV**

**FLOOD DEFENCE**

**Modifications etc. (not altering text)**

- C116** Pt. IV (ss. 105-113): functions transferred to the Environment Agency (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 2\(1\)\(a\)\(iii\)](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186](#), [art. 3](#) (with [art. 4](#))

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### General

#### 105 General functions with respect to flood defence.

- <sup>F260</sup>(1) .....
- (2) For the purpose of carrying out its flood defence functions the [<sup>F261</sup>appropriate agency] shall from time to time carry out surveys of the areas in relation to which it carries out those functions.
- (3) In the exercise of the powers conferred by the following provisions of this Part and the other flood defence provisions of this Act due regard shall be had to the interests of fisheries, including sea fisheries.
- (4) Nothing in the following provisions of this Part or the other flood defence provisions of this Act shall prejudice or affect the provisions of Part V of this Act or the <sup>M31</sup>Salmon and Freshwater Fisheries Act 1975 or any right, power or duty conferred or imposed by that Part or that Act.

#### Textual Amendments

**F260** S. 105(1) repealed (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 146, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F261** Words in ss. 105-107 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 274(b)** (with Sch. 7)

#### Modifications etc. (not altering text)

**C117** S. 105 excluded (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, ss. 19, 120(2), Sch. 5 Pt. II para. 13(2), **Sch. 23 Pt. II para. 23** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M31** 1975 c. 51.

#### <sup>F262</sup>106 Obligation to carry out flood defence functions through committees.

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#### Textual Amendments

**F262** S. 106 repealed (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 41** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)

#### Modifications etc. (not altering text)

**C118** S. 106 excluded (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, ss. 19, 120(2), Sch. 5 Pt. II para. 13(2), **Sch. 23 Pt. II para. 23** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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### *Main river functions*

#### **107 Main river functions under the Land Drainage Act 1991.**

- (1) This section has effect for conferring functions in relation to main rivers on the [F261appropriate agency] which are functions of drainage boards in relation to other watercourses.
- (2) Notwithstanding subsection (3) of section 21 of the Land Drainage Act 1991 (power to secure compliance with drainage obligations), the powers of the [F261appropriate agency] in relation to a main river shall, by virtue of this section, include the powers which under that section are exercisable otherwise than in relation to a main river by the drainage board concerned; and the provisions of that section shall have effect accordingly.
- (3) The powers of the [F261appropriate agency] in relation to a main river shall, by virtue of this section, include the powers which under section 25 of the Land Drainage Act 1991 (powers for securing the maintenance of flow of watercourses) are exercisable in relation to an ordinary watercourse by the drainage board concerned; and the provisions of that section and section 27 of that Act shall have effect accordingly.
- (4) Sections 33 and 34 of the Land Drainage Act 1991 (commutation of obligations) shall have effect where—
  - (a) any person is under an obligation imposed on him by reason of tenure, custom, prescription or otherwise to do any work in connection with the drainage of land (whether by way of repairing banks or walls, maintaining watercourses or otherwise); and
  - (b) that work is in connection with a main river,
 as they have effect in relation to an obligation to do work otherwise than in connection with a main river but as if the [F261appropriate agency] were under a duty to take steps to commute the obligation and the references in those sections to the drainage board for the internal drainage district where the works fall to be done were omitted.
- (5) In this section—
  - (a) references to the exercise of a power in relation to a main river shall include a reference to its exercise in connection with a main river or in relation to the banks of such a river or any drainage works in connection with such a river; and
  - (b) expressions used both in this section and in a provision applied by this section have the same meanings in this section as in that provision.
- (6) The functions of the [F261appropriate agency] by virtue of this section are in addition to the functions of the [F261appropriate agency] which by virtue of the provisions of the M32Land Drainage Act 1991 are exercisable by the [F261appropriate agency] concurrently with an internal drainage board.

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#### **Textual Amendments**

**F261** Words in ss. 105-107 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 274(b)** (with Sch. 7)

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### Marginal Citations

M32 1991 c. 59.

## 108 Schemes for transfer to the [<sup>F263</sup>appropriate agency] of functions in relation to main river.

- (1) The [<sup>F263</sup>appropriate agency] may at any time prepare and submit to either of the Ministers for confirmation a scheme making provision for the transfer to the [<sup>F263</sup>appropriate agency] from any drainage body of—
  - (a) all rights, powers, duties, obligations and liabilities (including liabilities incurred in connection with works) over or in connection with a main river; and
  - (b) any property held by the drainage body for the purpose of, or in connection with, any functions so transferred;
 and the [<sup>F263</sup>appropriate agency] shall prepare such a scheme and submit it to one of the Ministers if it is directed to do so by that Minister.
- (2) A scheme prepared and submitted under subsection (1) above may make provisions for any matter supplemental to or consequential on the transfers for which the scheme provides.
- (3) The Minister to whom a scheme is submitted under this section may by order made by statutory instrument confirm that scheme; and Schedule 14 to this Act shall have effect with respect to the procedure to be followed in connection with the making of such an order and with respect to challenges to such orders.
- (4) An order under this section may contain provisions with respect to the persons by whom all or any of the expenses incurred by the Ministers or other persons in connection with the making or confirmation of the order, or with the making of the scheme confirmed by the order, are to be borne.
- (5) Where, under a scheme made by the [<sup>F263</sup>appropriate agency] under this section, liabilities incurred in connection with drainage works are transferred to the [<sup>F263</sup>appropriate agency] from a local authority, the [<sup>F263</sup>appropriate agency] may require the local authority to make contributions to the [<sup>F263</sup>appropriate agency] towards the discharge of the liabilities.
- (6) If the amount to be paid by a local authority by way of contributions required under subsection (5) above is not agreed between the [<sup>F263</sup>appropriate agency] and the local authority, it shall be referred to the arbitration of a single arbitrator appointed—
  - (a) by agreement between them; or
  - (b) in default of agreement, by the Ministers.
- (7) The relevant Minister shall by regulations provide for the payment, subject to such exceptions or conditions as may be specified in the regulations, of compensation by the [<sup>F263</sup>appropriate agency] to any officer or other employee of a drainage body who suffers loss of employment or loss or diminution of emoluments which is attributable to a scheme under this section or anything done in pursuance of such a scheme.
- (8) Regulations under subsection (7) above may include provision—
  - (a) as to the manner in which and the persons to whom any claim for compensation by virtue of the regulations is to be made; and
  - (b) for the determination of all questions arising under the regulations.

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(9) In this section—

“drainage body” means an internal drainage board or any other body having power to make or maintain works for the drainage of land;

“the relevant Minister”—

- (a) in relation to employees of a drainage body wholly in Wales, means the Secretary of State;
- (b) in relation to employees of a drainage body partly in Wales, means the Ministers; and
- (c) in any other case, means the Minister.

**Textual Amendments**

**F263** Words in s. 108 and heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 274(b)** (with Sch. 7)

**F264** **109 Structures in, over or under a main river.**

.....

**Textual Amendments**

**F264** S. 109 repealed (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), regs. 1(2), **30** (with regs. 31-33)

**F265** **110 Applications for consents and approvals under section 109.**

.....

**Textual Amendments**

**F265** S. 110 repealed (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), regs. 1(2), **30** (with regs. 31-34)

*Arrangements with certain authorities*

**111 Arrangements with navigation and conservancy authorities.**

(1) Subject to subsection (2) below, the [<sup>F266</sup>appropriate agency], with a view to improving the drainage of any land, may enter into an arrangement with a navigation authority or conservancy authority for any of the following purposes, that is to say—

- (a) the transfer to the [<sup>F266</sup>appropriate agency] of—
  - (i) the whole or any part of the undertaking of the navigation authority or conservancy authority or of any of the rights, powers, duties, liabilities and obligations of that authority; or
  - (ii) any property vested in that authority as such;
- (b) the alteration or improvement by the [<sup>F266</sup>appropriate agency] of any of the works of the navigation authority or conservancy authority;

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- (c) the making of payments by the [F266 appropriate agency] to the navigation authority or conservancy authority or by that authority to the [F266 appropriate agency] in respect of any matter for which provision is made by the arrangement.
- (2) The exercise by the [F266 appropriate agency] of its power to enter into an arrangement under this section shall require the approval of the Ministers.
- (3) Where the [F266 appropriate agency] is intending to enter into an arrangement under this section it shall publish a notice of its intention in such manner as may be directed by either of the Ministers.
- (4) Where an arrangement has been made under this section, the [F266 appropriate agency] shall cause a notice under subsection (5) below to be published in the London Gazette in such form as may be prescribed by regulations made by one of the Ministers.
- (5) A notice under this subsection is a notice—
- (a) stating that the arrangement has been made; and
  - (b) specifying the place at which a copy of the arrangement may be inspected by persons interested.

#### Textual Amendments

**F266** Words in ss. 109-111 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 274\(b\)](#) (with Sch. 7)

### *Supplemental*

#### 112 Flood defence regulations.

The Ministers shall each have power by regulations to make provision generally for the purpose of carrying into effect the provisions of this Part and the other flood defence provisions of this Act.

#### 113 Interpretation of Part IV.

(1) In this Part—

“banks” means banks, walls or embankments adjoining or confining, or constructed for the purposes of or in connection with, any channel or sea front, and includes all land and water between the bank and low-watermark;

“drainage” includes—

- (a) defence against water, including sea water;
- (b) irrigation other than spray irrigation; <sup>F267</sup> . . .
- (c) warping; <sup>F268</sup> and
- (d) the carrying on, for any purpose, of any other practice which involves management of the level of water in a watercourse;]

“flood defence” means the drainage of land and the provision of flood warning systems;

“main river” (subject to section 137(4) below) means a watercourse shown as such on <sup>F269</sup> the main river map for England or the main river map for Wales]

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and includes any structure or appliance for controlling or regulating the flow of water into, in or out of the channel which—

- (a) is a structure or appliance situated in the channel or in any part of the banks of the channel; and
- (b) is not a structure or appliance vested in or controlled by an internal drainage board;

“watercourse” shall be construed as if for the words from “except” onwards in the definition in section 221(1) below there were substituted the words “except a public sewer”.

- (2) If any question arises under this Part—
  - (a) whether any work is a drainage work in connection with a main river; or
  - (b) whether any proposed work will, if constructed, be such a drainage work,
 the question shall be referred to one of the Ministers for decision or, if either of the parties so requires, to arbitration.
- (3) Where any question is required under subsection (2) above to be referred to arbitration it shall be referred to the arbitration of a single arbitrator appointed—
  - (a) by agreement between the parties; or
  - (b) in default of agreement, by the President of the Institution of Civil Engineers, on the application of either party.
- (4) Nothing in this Part shall affect the powers exercisable by the [<sup>F270</sup>appropriate agency] under any local Act, as they existed immediately before the coming into force of this Act.

#### Textual Amendments

- F267** Word in definition in s. 113(1) repealed (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F268** Words in definition in s. 113(1) added (subject to other provisions of the amending Act) (21.9.1995) by 1995 c. 25, **s. 100(1)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**
- F269** Words in s. 113(1) substituted (1.10.2014) by Water Act 2014 (c. 21), **ss. 59(3)**, 94; S.I. 2014/1823, **art. 3**
- F270** Words in s. 113(4) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 274(c)** (with Sch. 7)

#### Modifications etc. (not altering text)

- C119** S. 113 definitions of “main river” and “banks” applied by London Docklands Railway Act 1991 (c. xxiii), **s. 7(2)(b)**

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## PART V

### GENERAL CONTROL OF FISHERIES

#### Modifications etc. (not altering text)

**C120** Pt. V (ss. 114-116): certain functions transferred to the Environment Agency (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 2(1)(a)(v) (with ss. 115, 117); S.I. 1996/186, art. 3 (with art. 4)

<sup>F271</sup>114 .....

#### Textual Amendments

**F271** S. 114 repealed (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1) (3), Sch. 22 para. 148, Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3 (with art. 4)

#### 115 Fisheries orders.

- (1) Subject to the following provisions of this section, each of the Ministers shall have power, on an application made to him by the [<sup>F272</sup>appropriate agency], by order made by statutory instrument to make provision in relation to an area defined by the order for the modification, in relation to the fisheries in that area—
  - (a) of any provisions of the <sup>M33</sup>Salmon and Freshwater Fisheries Act 1975 [<sup>F273</sup>(as amended by the Marine and Coastal Access Act 2009) ] relating to the regulation of fisheries;
  - [<sup>F274</sup>(b) of section 142 or 156 below or paragraph 6 or 7 of Schedule 25 to this Act [<sup>F275</sup>(as so amended) ]; or]
  - (c) of any provisions of a local Act relating to any fishery in that area.
- (2) An order under this section—
  - (a) may contain such supplemental, consequential and transitional provision, including provision for the payment of compensation to persons injuriously affected by the order, as may appear to be necessary or expedient in connection with the other provisions of the order; but
  - (b) shall not apply to any waters in respect of which either of the Ministers has granted a licence under section 29 of the Salmon and Freshwater Fisheries Act 1975 (fish rearing licences).
- (3) Before either of the Ministers makes an order under this section he shall—
  - (a) send to the [<sup>F272</sup>appropriate agency] a copy of the draft order; and
  - (b) notify the [<sup>F272</sup>appropriate agency] of the time within which, and the manner in which, objections to the draft order may be made to him.
- (4) Neither of the Ministers shall make an order under this section unless the [<sup>F272</sup>appropriate agency] has caused notice of—
  - (a) that Minister's intention to make the order;
  - (b) the place where copies of the draft order may be inspected and obtained; and
  - (c) the matters notified under subsection (3)(b) above,



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to be published in the London Gazette and, if it is directed to do so by one of the Ministers, in such other manner as that Minister thinks best adapted for informing persons affected.

- (5) Before either of the Ministers makes an order under this section he—
- (a) shall consider any objection which may be duly made to the draft order; and
  - (b) may cause a public local inquiry to be held with respect to any such objections.
- (6) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament; and, where a statutory instrument is laid before Parliament for the purposes of this paragraph, a copy of the report of any local inquiry held with respect to objections considered in connection with the making of the order contained in that instrument shall be so laid at the same time.
- (7) Where—
- (a) any fishery, land or foreshore proposed to be comprised in an order under this section [<sup>F276</sup>making provision, by virtue of subsection (1)(b) above, for the modification of section 156 below in relation to fisheries in an area]; or
  - (b) any fishery proposed to be affected by any such order; or
  - (c) any land over which it is proposed to acquire an easement under any such order,
- belongs to Her Majesty in right of the Crown or forms part of the possessions of the Duchy of Lancaster or the Duchy of Cornwall or belongs to, or is under the management of, any government department, the order may be made by one of the Ministers only if he has previously obtained the consent of the appropriate authority.
- (8) In subsection (7) above “the appropriate authority”—
- (a) in the case of any foreshore under the management of the Crown Estate Commissioners or of any fishery or land belonging to Her Majesty in right of the Crown, means those Commissioners;
  - (b) in the case of any foreshore, fishery or land forming part of the possessions of the Duchy of Lancaster, means the Chancellor of the Duchy;
  - (c) in the case of any foreshore, fishery or land forming part of the possessions of the Duchy of Cornwall, means the Duke of Cornwall or the persons for the time being empowered to dispose for any purpose of the land of the Duchy;
  - (d) in the case of any foreshore, fishery or land which belongs to or is under the management of a government department, means that government department.
- (9) In this section “foreshore” includes the shore and bed of the sea and of every channel, creek, bay, estuary and navigable river as far as the tide flows.

#### Textual Amendments

- F272** Words in s. 115 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 274\(d\)](#) (with [Sch. 7](#))
- F273** Words in s. 115(1)(a) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), [Sch. 16 para. 21\(a\)](#); [S.I. 2009/3345](#), art. 2, [Sch. para. 15\(i\)](#)
- F274** S. 115(1)(b) substituted (subject to other provisions of the amending Act) (21.9.1995) by [1995 c. 25](#), s. 105, [Sch. 15 para. 25](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1995/1983](#), [art. 3](#) (with [art. 4](#))

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**F275** Words in s. 115(1)(b) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), [Sch. 16 para. 21\(b\)](#); S.I. 2009/3345, art. 2, Sch. para. 15(i)

**F276** Words in s. 115(7)(a) inserted (subject to other provisions of the amending Act) (21.9.1995) by 1995 c. 25, s. 116, [Sch. 21 Pt. 1 para. 2\(2\)](#) (with ss. 7(6), 115, 117); S.I. 1995/1983, [art. 3](#)

**Modifications etc. (not altering text)**

**C121** S. 115 excluded by [S.I. 1999/1746](#), [arts. 1\(1\)](#), 4(1) (with [art. 2](#)) (the exclusion coming into force immediately before the principal appointed day (1.7.1999 appointed by [S.I. 1998/3178](#), [art. 3](#)))

**Marginal Citations**

**M33** 1975 c. 51.

**116 Power to give effect to international obligations.**

<sup>F277</sup>(1) Each of the Ministers shall have power by regulations to provide that the provisions of this Part or of any other enactment relating to the carrying out by the <sup>F278</sup>appropriate agency] of such of its functions as relate to fisheries shall have effect with such modifications as may be prescribed by the regulations for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect—

- (a) to any <sup>F258</sup>EU] obligations; or
- (b) to any international agreement to which the United Kingdom is for the time being a party.

(2) In subsection (1), the reference to functions includes any functions conferred on the <sup>F278</sup>appropriate agency] by virtue of the Marine and Coastal Access Act 2009.

**Textual Amendments**

**F258** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), [arts. 2, 3, 6](#) (with [art. 3\(2\)\(3\)](#), 4(2), 6(4)(5))

**F277** S. 116(1): s. 116 renumbered as s. 116(1) (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), [Sch. 16 para. 22\(a\)](#); S.I. 2009/3345, art. 2, Sch. para. 15(i)

**F278** Words in s. 116 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 274\(d\)](#) (with Sch. 7)

**Modifications etc. (not altering text)**

**C122** S. 116 excluded by [S.I. 1999/1746](#), [arts. 1\(1\)](#), 4(1) (with [art. 2](#)) (the exclusion coming into force immediately before the principal appointed day (1.7.1999 appointed by [S.I. 1998/3178](#), [art. 3](#)))

**PART VI**

FINANCIAL PROVISIONS IN RELATION TO THE <sup>F279</sup>APPROPRIATE AGENCY]

**Textual Amendments**

**F279** Words in Pt. 6 heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 274\(e\)](#) (with Sch. 7)

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**CHAPTER I**

**GENERAL FINANCIAL PROVISIONS**

**F280** 117 .....

**Textual Amendments**  
**F280** S. 117 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 149, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**118 Special duties with respect to flood defence revenue.**

- (1) Revenue raised by the [F281 appropriate agency] as mentioned in subsection (2) below—
  - (a) shall, except for any amount falling within subsection (3) below, be spent only in the carrying out of the [F282 appropriate agency's] [F283 flood and coastal erosion risk management functions, within the meaning of Part 1 of the Flood and Water Management Act 2010,] in or for the benefit of the [F284 flood risk management region] in which it is raised; F285 ...
  - (b) [F286 where the appropriate agency is the Agency,] shall be disregarded in determining the amount of any surplus for the purposes of section 44(4) of the 1995 Act [F287; and]
  - [F288(c) where the appropriate agency is the NRBW, shall be disregarded in determining the amount of any surplus for the purposes of article 13 of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I.2012/1903).]
- (2) The revenue referred to in subsection (1) above is revenue raised by the [F289 appropriate agency] in a [F290 flood risk management region]—
  - (a) by virtue of any regulations under section 74 of the M34 Local Government Finance Act 1988 (power to issue levies);
  - (b) by general drainage charges under sections 134 [F291 and 135] below;
  - (c) by special drainage charges under sections 137 and 138 below; or
  - (d) by contributions required under section 139(1) below.
- (3) An amount falls within this subsection if it is an amount which the [F292 appropriate agency] considers it appropriate—
  - (a) to set aside towards research or related activities or towards meeting the [F292 appropriate agency's] administrative expenses; F293 ...
  - F293(b) .....
- (4) Any amount specified in a resolution under section 58(1)(b) of the M35 Land Drainage Act 1991 in relation to any [F294 flood risk management region] (allocation of revenue in lieu of contributions) shall be treated for the purposes of this section as if it were revenue actually raised by contributions required under section 139(1) below.
- (5) For the purposes of this section, the following sums, that is to say—
  - (a) any sums held by the [F295 appropriate agency] by virtue of any transfer of property, rights or liabilities from a water agency in accordance with a scheme under Schedule 2 to the M36 Water Act 1989, in so far as those sums represent

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amounts which the water agency was required by virtue of paragraph 31 of Schedule 3 to the <sup>M37</sup>Water Act 1973 to spend only in the discharge of their land drainage functions in or for the benefit of a particular local land drainage district; and

- (b) any sums raised by the [<sup>F295</sup>appropriate agency] in a [<sup>F296</sup>flood risk management region] by virtue of a precept issued under section 46 of the <sup>M38</sup>Land Drainage Act 1976,

shall be treated as revenue raised by the [<sup>F295</sup>appropriate agency] as mentioned in subsection (2) above in the corresponding [<sup>F297</sup>flood risk management region] or, as the case may be, in that local flood defence district.

<sup>F298</sup>(6) .....

[<sup>F299</sup>(7) In this section “flood risk management region”][<sup>F300</sup>—

- (a) in relation to the Agency,] means the region of a Regional Flood and Coastal Committee, within the meaning of section 22 of the Flood and Water Management Act 2010 [<sup>F301</sup>, and
- (b) in relation to the NRBW, means Wales, within the meaning of section 158 of the Government of Wales Act 2006].

#### Textual Amendments

- F281** Words in s. 118(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 275(2)(a)** (with Sch. 7)
- F282** Words in s. 118(1)(a) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 275(2)(b)** (with Sch. 7)
- F283** Words in s. 118(1) substituted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 43(2)(a)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F284** Words in s. 118(1) substituted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 43(2)(b)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F285** Word in s. 118(1)(a) omitted (1.4.2013) by virtue of The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 275(2)(c)** (with Sch. 7)
- F286** Words in s. 118(1)(b) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 275(2)(d)(i)** (with Sch. 7)
- F287** Word in s. 118(1)(b) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 275(2)(d)(ii)** (with Sch. 7)
- F288** S. 118(1)(c) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 275(2)(e)** (with Sch. 7)
- F289** Words in s. 118(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 275(3)** (with Sch. 7)
- F290** Words in s. 118(2) substituted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 43(3)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F291** Words in s. 118(2)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22**, para. 150(3) (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F292** Words in s. 118(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 275(3)** (with Sch. 7)
- F293** S. 118(3)(b) and word omitted (1.4.2011) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 43(4)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F294** Words in s. 118(4) substituted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 43(5)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F295** Words in s. 118(5) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 275(3)** (with Sch. 7)

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- F296** Words in s. 118(5) substituted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 43(6)(a)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F297** Words in s. 118(5) substituted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 43(6)(b)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F298** S. 118(6) omitted (1.4.2011) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 43(7)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F299** S. 118(7) added (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 43(8)** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F300** Words in s. 118(7) inserted (14.7.2017) by Environment (Wales) Act 2016 (anaw 3), s. 88(3)(c), **Sch. 2 para. 20(2)(a)**; S.I. 2017/714, art. 2
- F301** Words in s. 118(7) inserted (14.7.2017) by Environment (Wales) Act 2016 (anaw 3), s. 88(3)(c), **Sch. 2 para. 20(2)(b)**; S.I. 2017/714, art. 2

#### Modifications etc. (not altering text)

- C123** S. 118 restricted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), **ss. 23(4)**, 49(3) (with s. 49(1)(6)); S.I. 2011/694, art. 3(c)

#### Marginal Citations

- M34** 1988 c. 41.
- M35** 1991 c. 59.
- M36** 1989 c. 15.
- M37** 1973 c. 37.
- M38** 1976 c. 70.

### <sup>F302</sup>**119 Duties with respect to certain funds raised under local enactments.**

- (1) Where the Agency holds any funds, or any interest in any funds, which immediately before the transfer date the National Rivers Authority, by virtue of this subsection as originally enacted, was not permitted to use except for particular purposes, those funds or that interest shall not be used except for the purposes for which they could be used by virtue of this subsection as originally enacted.
- (1A) For the purposes of subsection (1) above, “the transfer date” has the same meaning as in Part I of the 1995 Act.]
- (2) Any funds to which subsection (1) above applies shall be disregarded in determining the amount of any surplus under [<sup>F303</sup>section 44(3) of the 1995 Act].

#### Textual Amendments

- F302** S. 119 (1)(1A) substituted (1.4.1996) for s. 119(1) by 1995 c. 25, s. 120(1), **Sch. 22 para. 151(1)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F303** Words in s. 119(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 151(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### **120 Contributions between the [<sup>F304</sup>appropriate agency] and certain other authorities.**

- (1) Where, on the application of a navigation authority, harbour authority or conservancy authority, it appears to the [<sup>F304</sup>appropriate agency] that any works constructed or maintained by the applicants have made, or will make, a beneficial contribution towards the fulfilment of the purposes of the [<sup>F304</sup>appropriate agency's] water resources

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- functions, the [F304appropriate agency] shall contribute towards the expenditure incurred or to be incurred by the applicants in constructing or maintaining those works.
- (2) Where, on the application of the [F304appropriate agency], it appears to a navigation authority, harbour authority or conservancy authority that any works constructed or maintained by the [F304appropriate agency] in the carrying out of its water resources functions have made, or will make, a beneficial contribution towards the carrying out of the functions of the authority to whom the application is made, that authority shall contribute to the [F304appropriate agency] towards the expenditure incurred or to be incurred by the [F304appropriate agency] in constructing or maintaining those works.
- (3) Subject to the following provisions of this section, the sums to be paid by way of contribution and the terms and conditions on which they are to be paid shall be such as the [F304appropriate agency] and the other authority concerned may agree to be appropriate.
- (4) If on any application under this section—
- (a) the [F304appropriate agency] or, as the case may be, the other authority to whom the application is made refuses to make a contribution; or
  - (b) the [F304appropriate agency] and the other authority concerned are unable to agree as to the sums to be contributed or the terms and conditions on which they are to be contributed,
- the [F304appropriate agency] or the other authority concerned may refer the matter in dispute to the Secretary of State.
- (5) On a reference under subsection (4) above the Secretary of State may either—
- (a) determine that matter himself; or
  - (b) refer it for determination to an arbitrator appointed by him for the purpose;
- and where any decision has been made by the Secretary of State or an arbitrator under this subsection, the decision shall be final and a contribution shall be made in accordance with the decision as if the sums, terms or conditions determined under this subsection had been agreed to be appropriate as mentioned in subsection (3) above.
- (6) Any expenditure incurred by a navigation authority, harbour authority or conservancy authority in paying any contribution under this section shall be defrayed in the like manner as any corresponding expenditure of that authority; and that authority shall have the same powers for the purpose of raising money required for paying any such contribution as they would have for the purpose of raising money required for defraying any corresponding expenditure of that authority.
- (7) In subsection (6) above the references to corresponding expenditure of a navigation authority, harbour authority or conservancy authority, in relation to the payment of a contribution in respect of any works, are references to expenditure incurred by the authority in performing the functions in respect of which it is claimed by the [F304appropriate agency] that the works have made, or will make, such a beneficial contribution as is mentioned in subsection (2) above.
- (8) References in this section to the water resources functions of the [F304appropriate agency] are references to the functions of the [F304appropriate agency] under Part II of this Act or under any provisions not contained in that Part which are related water resources provisions in relation to Chapter II of that Part.

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**Textual Amendments**

**F304** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 276](#) (with [Sch. 7](#))

**Modifications etc. (not altering text)**

**C124** S. 120 applied (1.4.2006) by [Water Act 2003 \(c. 37\)](#), [ss. 33\(3\)\(a\)](#), 105(3); [S.I. 2006/984](#), [art. 2\(p\)](#)

**F305** **121** .....

**Textual Amendments**

**F305** Ss. 121-124 repealed (1.4.1996) by [1995 c. 25](#), [s. 120\(1\)\(3\)](#), [Sch. 22 para. 152](#), [Sch. 24](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3](#)

**F306** **122** .....

**Textual Amendments**

**F306** Ss. 121-124 repealed (1.4.1996) by [1995 c. 25](#), [s. 120\(1\)\(3\)](#), [Sch. 22 para. 152](#), [Sch. 24](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3](#)

**CHAPTER II**

**REVENUE PROVISIONS**

*Water resources charges*

**F307** **123** .....

**Textual Amendments**

**F307** Ss. 121-124 repealed (1.4.1996) by [1995 c. 25](#), [s. 120\(1\)\(3\)](#), [Sch. 22 para. 152](#), [Sch. 24](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3](#)

**F308** **124** .....

**Textual Amendments**

**F308** Ss. 121-124 repealed (1.4.1996) by [1995 c. 25](#), [s. 120\(1\)\(3\)](#), [Sch. 22 para. 152](#), [Sch. 24](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3](#)

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**125 Specific exemptions from water resources charges.**

- (1) No charges, other than those for the purpose of recovering administrative expenses attributable to the exercise by the [F304 appropriate agency] of its functions in relation to the application for the licence, shall be levied in respect of water authorised by a licence to be abstracted for use in the production of electricity or any other form of power by any generating station or apparatus of a capacity of not more than five megawatts.

F309 (2) .....

**Textual Amendments**

**F304** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 276](#) (with Sch. 7)

**F309** S. 125(2) repealed (1.4.2006) by [Water Act 2003 \(c. 37\), s. 105\(3\), Sch. 7 para. 10, Sch. 9 Pt. 3; S.I. 2006/984, art. 2\(s\)](#)

**126 Agreements containing exemptions from charges.**

- (1) The [F304 appropriate agency] may, on the application of any person who is liable to pay charges to the [F304 appropriate agency] for the abstraction of water under a licence under Chapter II of Part II of this Act, make an agreement with him either exempting him from the payment of charges or providing for charges to be levied on him at reduced rates specified in the agreement.
- (2) In the exercise of its powers under subsection (1) above in relation to any person, the [F304 appropriate agency] shall have regard to—
  - (a) the extent to which any works constructed at any time by that person or any works to be constructed by him have made, or will make, a beneficial contribution towards the fulfilment of the purposes of the functions of the [F304 appropriate agency] under any enactment;
  - (b) any financial assistance which that person has rendered, or has agreed to render, towards the carrying out of works by the [F304 appropriate agency] in the performance of those functions; and
  - (c) any other material considerations.
- (3) The Secretary of State may give directions as to the exercise by the [F304 appropriate agency] of its powers under subsection (1) above.
- (4) Without prejudice to the exercise of the power conferred by subsection (3) above, if on any application under this section—
  - (a) the [F304 appropriate agency] refuses to make an agreement with the applicant as mentioned in subsection (1) above; or
  - (b) the applicant objects to the terms of such an agreement as proposed by the [F304 appropriate agency] and that objection is not withdrawn,
 the applicant or the [F304 appropriate agency] may refer the question in dispute to the Secretary of State.
- (5) On a reference under subsection (4) above—
  - (a) the Secretary of State shall determine the question in dispute, having regard to the matters to which, in accordance with subsection (2) above,



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the [<sup>F304</sup>appropriate agency] was required to have regard in relation to the applicant; and

- (b) may give directions to the [<sup>F304</sup>appropriate agency] requiring it to make an agreement with the applicant in accordance with his decision.

<sup>F310</sup>(6) . . . . .

- (7) Any decision of the Secretary of State on a reference under subsection (4) above shall be final; and section 69 above shall apply in relation to the decision on a reference under this section as it applies in relation to a decision on a reference such as is mentioned in subsection (1)(b) of that section, but as if references to the other party were references to the applicant.

#### Textual Amendments

**F304** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)

**F310** S. 126(6) repealed (21.9.1995) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 153, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

### 127 Special charges in respect of spray irrigation.

- (1) Where a person (“the applicant”) is for the time being the holder of a licence under Chapter II of Part II of this Act to abstract water (“the applicant’s licence”), and in accordance with the provisions of that licence—

- (a) the water is to be used on land of which the applicant is the occupier; and
- (b) the purposes for which water abstracted in pursuance of the licence is to be used consist of or include spray irrigation,

the applicant may apply to the [<sup>F304</sup>appropriate agency] to make an agreement with him under this section and, subject to the following provisions of this section and sections 128 and 129 below, the [<sup>F304</sup>appropriate agency] may make such an agreement accordingly.

- (2) During any period for which an agreement under this section is in force, the following charges shall be payable by the applicant to the [<sup>F304</sup>appropriate agency] in respect of the applicant’s licence, in so far as it relates to water authorised to be abstracted and used on the relevant land, that is to say—

- (a) basic charges calculated, in accordance with the agreement, by reference to the quantity of water authorised to be so abstracted and used from time to time in pursuance of the licence; and
- (b) supplementary charges calculated, in accordance with the agreement, by reference to the quantity of water which is measured or assessed as being abstracted from time to time by or on behalf of the applicant from the source of supply to which the applicant’s licence relates for use on the relevant land.

- (3) In determining—

- (a) whether to make an agreement with the applicant under this section; and
- (b) the charges to be leviable under such an agreement,

the [<sup>F304</sup>appropriate agency] shall have regard to the extent to which, in any year within the period proposed to be specified in the agreement as the period for which it is made,

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the quantity of water referred to in paragraph (a) of subsection (2) above is likely to exceed the quantity referred to in paragraph (b) of that subsection.

- (4) Where the applicant’s licence authorises water abstracted in pursuance of the licence to be used on the relevant land for purposes which include spray irrigation and other purposes—
- (a) any agreement made under this section shall provide for apportioning, as between those purposes respectively, the quantity referred to in paragraph (a) of subsection (2) above and the quantity referred to in paragraph (b) of that subsection;
  - (b) subsection (2) above shall have effect as if in each of those paragraphs the reference to the quantity of water mentioned in that paragraph were a reference to so much of that quantity as in accordance with the agreement is apportioned to the purpose of spray irrigation; and
  - (c) in subsection (3) above any reference to either of those paragraphs shall be construed as a reference to that paragraph as modified by paragraph (b) of this subsection.
- (5) An application under subsection (1) above may be made by a person who has applied for, but is not yet the holder of, a licence under Chapter II of Part II of this Act to abstract water; and, in relation to an application so made or to an agreement made on such an application—
- (a) the reference in that subsection to the provisions of the applicant’s licence shall be construed as a reference to the proposals contained in the application for a licence; and
  - (b) any other reference in this section or in section 128 or 129 below to the applicant’s licence shall be construed as a reference to any licence granted to the applicant in pursuance of the application mentioned in paragraph (a) above or in pursuance of an appeal consequential upon the application so mentioned.
- (6) In this section and sections 128 and 129 below—
- “the applicant” and “the applicant’s licence” shall be construed, subject to subsection (5) above, in accordance with subsection (1) above;
- “the relevant land” means the land on which the applicant’s licence, as for the time being in force, authorises water abstracted in pursuance of the licence to be used for purposes which consist of or include spray irrigation; and
- “year” means a period of twelve months beginning—
- (a) with the date on which an agreement under this section comes into force or is proposed to come into force; or
  - (b) with an anniversary of that date.

#### **Textual Amendments**

**F304** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 276](#) (with [Sch. 7](#))

#### **Modifications etc. (not altering text)**

**C125** S. 127(1)(4) modified (18.5.1992) by [S.I. 1992/1096](#), arts. 3, 4, [Sch.](#)

*Status: Point in time view as at 17/09/2018.*

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## 128 Duration of agreement under section 127.

- (1) The period specified in an agreement under section 127 above as the period for which it is made shall not be less than five years.
- (2) An agreement under section 127 above shall remain in force until the occurrence of whichever of the following events first occurs, that is to say—
  - (a) the period specified in the agreement, as mentioned in subsection (1) above, comes to an end;
  - (b) the applicant's licence expires or is revoked;
  - (c) the applicant ceases to be the occupier of the relevant land or, if he has previously ceased to be the occupier of a part or parts of that land, ceases to be the occupier of the remainder of it;
  - (d) the agreement is terminated under subsection (4) below.
- (3) At any time while an agreement under section 127 above is in force, the applicant may apply to the [F304 appropriate agency] to terminate the agreement.
- (4) If, on an application for the termination of an agreement under section 127 above, the [F304 appropriate agency] is satisfied that, by reason of any change of circumstances since the agreement was made, it ought to be terminated, it may terminate the agreement, either unconditionally or subject to such conditions (whether as to any payment to be made by the applicant or otherwise) as the [F304 appropriate agency] and the applicant may agree.

### Textual Amendments

**F304** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 276](#) (with [Sch. 7](#))

## 129 Directions and appeals with respect to exercise of powers under sections 127 and 128.

- (1) The Secretary of State may give directions as to the exercise by the [F304 appropriate agency] of its powers under sections 127 and 128 above.
- (2) Without prejudice to the exercise of the power conferred by subsection (1) above, if on any application under section 127 or 128 above—
  - (a) the [F304 appropriate agency] refuses to make or terminate an agreement under section 127 above; or
  - (b) the applicant objects to the proposals of the [F304 appropriate agency] —
    - (i) as to the terms of such an agreement; or
    - (ii) as to the conditions subject to which such an agreement is to be terminated,and that objection is not withdrawn,the applicant or the [F304 appropriate agency] may refer the question in dispute to the Secretary of State.
- (3) On a reference under subsection (2) above—
  - (a) the Secretary of State shall determine the question in dispute, having regard to the matters to which, in accordance with subsection (3) of section 127 above,

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the [F304 appropriate agency] would be required to have regard in relation to the applicant on an application under that section; and

- (b) may give directions to the [F304 appropriate agency] requiring it to make an agreement with the applicant in accordance with his decision.

F311(4) . . . . .

- (5) Any decision of the Secretary of State on a reference under subsection (2) above shall be final; and section 69 above shall apply in relation to the decision on a reference under this section as it applies in relation to a decision on a reference such as is mentioned in subsection (1)(b) of that section, but as if references to the other party were references to the applicant.

#### Textual Amendments

**F304** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)

**F311** S. 129(4) repealed (21.9.1995) by [1995 c. 25](#), s. 120(1)(3), **Sch. 22 para. 153** (with ss. 7(6), 115, 117); [S.I. 1995/1983](#), art. 3

### 130 Charges in respect of abstraction from waters of [F312 Canal & River Trust].

- (1) Where [F313 Canal & River Trust] are the holders of a licence under Chapter II of Part II of this Act authorising abstraction from any inland waters to which section 66 above applies, then, the charges which, apart from this subsection, would be payable in respect of that licence either—

- (a) shall be reduced to such extent, and as so reduced shall be payable subject to such conditions; or  
 (b) shall not be payable,

as [F313 Canal & River Trust] and the [F304 appropriate agency] may agree or, in default of such agreement, the Secretary of State may determine.

- (2) Where—

- (a) a person other than [F314 Canal & River Trust] is the holder of a licence under Chapter II of Part II of this Act authorising abstraction from any inland waters to which section 66 above applies; and

- (b) any charges in respect of that licence are payable,

the [F304 appropriate agency] shall pay to [F314 Canal & River Trust] such proportion of those charges, subject to such conditions, as [F314 Canal & River Trust] and the [F304 appropriate agency] may agree, or, in default of such agreement, the Secretary of State may determine.

#### Textual Amendments

**F304** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)

**F312** Words in s. 130 heading substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 3 para. 11(4)** (with arts. 4-6)

**F313** Words in s. 130(1) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 3 para. 11(5)** (with arts. 4-6)

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**F314** Words in s. 130(2) substituted (2.7.2012) by [The British Waterways Board \(Transfer of Functions\) Order 2012 \(S.I. 2012/1659\)](#), art. 1(2), **Sch. 3 para. 11(5)** (with arts. 4-6)

### *Charges in connection with control of pollution*

**F315** **131** .....

#### **Textual Amendments**

**F315** Ss. 131, 132 repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), [Sch. 22 para. 154](#), **Sch. 24** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**

**F316** **132** .....

#### **Textual Amendments**

**F316** Ss. 131, 132 repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), [Sch. 22 para. 154](#), **Sch. 24** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**

### *Levies by the [<sup>F317</sup>Agency] on local authorities*

#### **Textual Amendments**

**F317** Word in cross-heading to s. 133 substituted (subject to other provisions of amending Act) (1.4.1996) by [1995 c. 25](#), s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**

**F319** **133** Power to authorise the [<sup>F318</sup>Agency] to issue levies.

#### **Textual Amendments**

**F318** Words in s. 133 and the sidenote substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25](#), s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**  
**F319** S. 133 repealed (1.4.2011) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 2 para. 44** (with s. 49(1)(6)); [S.I. 2011/694](#), art. 3(g) (with art. 5(1))

### *General drainage charges*

**134** **Raising of general drainage charges.**

(1) Subject to subsection (2) below, the [<sup>F304</sup>appropriate agency] may raise at an amount per hectare of chargeable land in [<sup>F320</sup>a flood risk management region] a charge to be known as a general drainage charge and to be levied in accordance with sections 135 and 136 below.

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- (2) The [<sup>F321</sup>Agency] shall not levy a general drainage charge in respect of [<sup>F322</sup>any flood risk management region] unless [<sup>F323</sup>the Regional Flood and Coastal Committee for that region] have recommended that such a charge should be raised.

<sup>F324</sup>(3) . . . . .

#### Textual Amendments

- F304** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)
- F320** Words in s. 134(1) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 6(2)**
- F321** Word in s. 134(2) substituted (14.7.2017) by [Environment \(Wales\) Act 2016 \(anaw 3\)](#), s. 88(3)(c), **Sch. 2 para. 20(3)**; S.I. 2017/714, art. 2
- F322** Words in s. 134(2) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 6(3)(a)**
- F323** Words in s. 134(2) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 6(3)(b)**
- F324** S. 134(3) repealed (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 6(4)**

#### Modifications etc. (not altering text)

- C126** S. 134 restricted (1.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 2(2), 4(2), **Sch. 2 Pt. 1 para. 2(2)**

### 135 Amount, assessment etc. of general drainage charge.

- (1) A general drainage charge raised by the [<sup>F304</sup>appropriate agency] for [<sup>F325</sup>a flood risk management region] for any year shall be at a uniform amount per hectare of chargeable land in [<sup>F326</sup>that region].
- (2) The uniform amount referred to in subsection (1) above shall be ascertained, subject to subsection (3) below, by multiplying the relevant quotient <sup>F327</sup> . . . by one penny and by such number as may be specified by either of the Ministers by order made for the purposes of this subsection.
- (3) The number specified in an order under this section for the purposes of subsection (2) above shall (apart from any adjustment made to it to take account of rough grazing land) be such as the Minister making the order considers will secure, so far as reasonably practicable, that the amount specified in paragraph (a) below will be equal to the amount specified in paragraph (b) below, that is to say—
- (a) the aggregate amount produced by any charge levied by reference to a relevant quotient <sup>F328</sup> . . . ; and
  - (b) the aggregate amount which, if the chargeable land in [<sup>F329</sup>the flood risk management region] had been liable to be rated for the financial year beginning in 1989, would have been produced by a rate levied on the land at an amount in the pound (of rateable value) equal to that quotient multiplied by one penny.
- (4) An order under this section may be made so as to apply either—
- (a) to all general drainage charges; or
  - (b) to the general drainage charges proposed to be raised in any [<sup>F330</sup>one or more flood risk management regions] specified in the order;

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and any such order applying to [<sup>F331</sup>more than one flood risk management region] may make different provision as respects the different [<sup>F332</sup>flood risk management regions] to which it applies.

(5) Schedule 15 to this Act shall have effect with respect to the assessment, incidence, payment and enforcement of general drainage charges.

(6) The power of each of the Ministers to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

<sup>F333</sup>[(7) In this section “relevant quotient” means a quotient determined for the year concerned in accordance with rules contained in regulations made by either of the Ministers.]

**Textual Amendments**

- F304** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), **Sch. 2 para. 276** (with [Sch. 7](#))
- F325** Words in s. 135(1) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 7(2)(a)**
- F326** Words in s. 135(1) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 7(2)(b)**
- F327** Words in s. 135(2) repealed (1.8.1992 subject to savings in [S.I. 1992/1755](#), [art. 2\(2\)](#)) by [Local Government Finance Act 1992 \(c. 14\)](#), s. 117(1)(2), [Sch. 13 para. 96\(1\)](#), **Sch. 14** (with s. 118(1)(2)(4)); [S.I. 1992/1755](#), [art. 2\(1\)](#)
- F328** Words in s. 135(3)(a) repealed (1.8.1992 subject to savings in [S.I. 1992/1755](#), [art. 2\(2\)](#)) by [Local Government Finance Act 1992 \(c. 14\)](#), s. 117(1)(2), [Sch. 13 para. 96\(2\)](#), **Sch. 14** (with s. 118(1)(2)(4)); [S.I. 1992/1755](#), [art. 2\(1\)](#)
- F329** Words in s. 135(3)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 7(3)**
- F330** Words in s. 135(4)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 7(4)(a)**
- F331** Words in s. 135(4) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 7(4)(b)(i)**
- F332** Words in s. 135(4) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 7(4)(b)(ii)**
- F333** S. 135(7) added (1.8.1992 subject to savings in [S.I. 1992/1755](#), [art. 2\(2\)](#)) by [Local Government Finance Act 1992 \(c. 14\)](#), s. 117(1), **Sch. 13 para. 96(3)** (with s. 118(1)(2)(4)); [S.I. 1992/1755](#), [art. 2\(1\)](#)

**Modifications etc. (not altering text)**

- C127** S. 135 restricted (1.12.1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60\)](#), [SIF 130](#), ss. 2(2), 4(2), **Sch. 2 Pt. I para. 2(2)**.

<sup>F334</sup>136 .....

**Textual Amendments**

- F334** S. 136 repealed (1.8.1992 subject to savings in [S.I. 1992/1755](#), [art. 2\(2\)](#)) by [Local Government Finance Act 1992 \(c. 14\)](#), s. 117(1)(2), [Sch. 13 para. 97](#), **Sch.14** (with s. 118(1)(2)(4)); [S.I. 1992/1755](#), [art. 2\(1\)](#)

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### *Special drainage charges*

#### **137 Special drainage charges in interests of agriculture.**

- (1) Where it appears to the [<sup>F304</sup>appropriate agency] that the interests of agriculture require the carrying out, improvement or maintenance of drainage works in connection with any watercourses in [<sup>F335</sup>any flood risk management region], the [<sup>F304</sup>appropriate agency] may submit to either of the Ministers for confirmation a scheme under this section with respect to those watercourses.
- (2) A scheme under this section with respect to any watercourses is a scheme—
  - (a) designating those watercourses, and any watercourses connected with them, for the purposes of this section; and
  - (b) making provision for the raising, in accordance with section 138 below, of a charge (known as a “special drainage charge”) for the purpose of meeting the expenses of drainage works in connection with the designated watercourses and any expenses arising from such works.
- (3) A scheme under this section shall designate for the purposes of the special drainage charge so much of [<sup>F336</sup>the flood risk management region] as consists of land which, in the opinion of the [<sup>F304</sup>appropriate agency], is agricultural land that would benefit from drainage works in connection with the designated watercourses.
- (4) The watercourses designated in any scheme under this section shall, if the scheme is confirmed, be treated for the purposes of this Act and the <sup>M39</sup>Land Drainage Act 1991 as part of a main river.
- (5) A scheme under this section-
  - (a) may make provision for any of the matters referred to in subsections (1) and (2) of section 108 above; and
  - (b) may provide for the revocation or amendment of, and for the retransfer of property, rights, powers, duties, obligations and liabilities transferred by, any previous scheme under this section.
- (6) Schedule 16 to this Act shall have effect with respect to the making and confirmation of schemes under this section.
- (7) For the purposes of this section—
  - (a) the reference to expenses of drainage works is a reference to expenses incurred in the construction, improvement or maintenance of drainage works;
  - (b) the expenses of any drainage works which may be necessary in consequence of other drainage works, and so much of any contribution made under section 57 of the <sup>M40</sup>Land Drainage Act 1991 as is fairly attributable to such expenses, shall be deemed to be expenses arising from those other drainage works; and
  - (c) the expenses of any drainage works shall be taken (without prejudice to section 221(5) below) to include a proper proportion of the cost of the officers and buildings and establishment of the authority carrying them out.
- (8) In this section and Schedule 16 to this Act “watercourse” has the same meaning as in Part IV of this Act.



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#### Textual Amendments

**F304** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)

**F335** Words in s. 137(1) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 8(2)**

**F336** Words in s. 137(3) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 8(3)**

#### Marginal Citations

**M39** 1991 c. 59.

**M40** 1991 c. 59.

### 138 Levying and amount of special drainage charge.

- (1) A special drainage charge shall be levied by the [<sup>F304</sup>appropriate agency] in respect of chargeable land included in the area designated for the purposes of the charge by the scheme authorising it (“the relevant chargeable land”).
- (2) The special drainage charge raised for any year shall be at a uniform amount per hectare of the relevant chargeable land.
- (3) The uniform amount referred to in subsection (2) above shall be determined by [<sup>F337</sup>the Regional Flood and Coastal Committee for the flood risk management region within which is the area] which includes the relevant chargeable land [<sup>F338</sup>(where that land is in England) or by the NRBW (where the relevant chargeable land is in Wales)] but shall exceed neither—
  - (a) an amount to be specified in the scheme as the maximum amount of the charge or such greater amount as may be authorised for the purposes of the scheme by an order made by one of the Ministers on the application of the [<sup>F304</sup>appropriate agency]; nor
  - (b) twenty-five pence or such other amount as may be substituted for twenty-five pence by an order made by one of the Ministers and approved by a resolution of the House of Commons.
- (4) Before either of the Ministers makes an order under subsection (3)(a) above he shall—
  - (a) consult with such of the associations and persons concerned as he considers appropriate;
  - (b) cause a notice of his intention to make the order, and of the time (which shall not be less than thirty days) within which objections to the proposed order may be made to him, to be published in such manner as he thinks best adapted for informing persons affected;
  - (c) if he considers it necessary, afford such persons an opportunity of appearing before and being heard by a person appointed by him for the purpose; and
  - (d) consider the report of the person so appointed and any objections duly made.
- (5) An order under subsection (3)(b) above may be made so as to apply—
  - (a) to special drainage charges in general; or
  - (b) to the special drainage charges proposed to be raised in respect of [<sup>F339</sup>areas within such flood risk management regions] as may be specified in the order; or
  - (c) to special drainage charges proposed to be raised in pursuance of one or more schemes made under section 137 above and so specified;

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and any such order applying to the charges proposed to be raised in respect of [F340 areas within more than one flood risk management region], or authorised by more than one such scheme, may make different provision for the charges in respect of [F341 different flood risk management regions] or, as the case may be, the charges authorised by the different schemes.

- (6) The power of each of the Ministers to make an order under subsection (3)(b) above shall be exercisable by statutory instrument; and section 14 of the <sup>M41</sup>Interpretation Act 1978 (power to revoke or amend orders made by statutory instrument) shall apply to the power to make orders under subsection (3)(a) above as it applies, by virtue of this subsection, to the power to make orders under subsection (3)(b) above.
- (7) Schedule 15 to this Act shall have effect with respect to the assessment, incidence, payment and enforcement of special drainage charges.

#### Textual Amendments

- F304** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)
- F337** Words in s. 138(3) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 9(2)**
- F338** Words in s. 138(3) inserted (14.7.2017) by [Environment \(Wales\) Act 2016 \(anaw 3\)](#), s. 88(3)(c), **Sch. 2 para. 20(4)**; [S.I. 2017/714](#), art. 2
- F339** Words in s. 138(5)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 9(3)(a)**
- F340** Words in s. 138(5) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 9(3)(b)(i)**
- F341** Words in s. 138(5) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 9(3)(b)(ii)**

#### Marginal Citations

- M41** 1978 c. 30.

### *Revenue from internal drainage boards*

#### 139 Contributions from internal drainage boards.

- (1) Subject to subsections (2) and (3) below, the [F304 appropriate agency] shall by resolution require every internal drainage board to make towards the expenses of the [F304 appropriate agency] such contribution as the [F304 appropriate agency] may consider to be fair.
- (2) Subject to subsection (3) below, where an internal drainage district (“the main internal drainage district”) comprises two or more other internal districts (“minor internal drainage districts”), the [F304 appropriate agency] shall not require the drainage board for that district to make any contribution towards the expenses of the [F304 appropriate agency] except in respect of such part, if any, of that district as is not situated within any minor internal drainage district.
- (3) Notwithstanding subsection (2) above, the [F304 appropriate agency], after determining what contribution should be made by the drainage board for each of the minor internal drainage districts, may, if it thinks fit, require the drainage board for the main internal

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drainage district to pay direct to the [F304 appropriate agency] an amount equal to the aggregate of those contributions.

- (4) If the [F304 appropriate agency] make a requisition under subsection (3) above, the drainage board of the main internal drainage district shall raise the amount paid by them under that subsection to the [F304 appropriate agency] by means of drainage rates levied by them within, or special levies issued in respect of, the main internal drainage district or, as the case may be, such part of that district as is situated within a minor internal drainage district.
- (5) Without prejudice to subsection (3) of section 140 below, a resolution under this section may be acted upon by the [F304 appropriate agency] forthwith, notwithstanding that the time for bringing an appeal under that section has not expired or that an appeal so brought is pending.

#### Textual Amendments

**F304** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 276](#) (with [Sch. 7](#))

### 140 Appeals in respect of resolutions under section 139.

- (1) If—
  - (a) an internal drainage board is aggrieved by a resolution of the [F304 appropriate agency] under section 139 above determining the amount of any contribution; or
  - (b) the council of any county [F342, county borough] or London borough is aggrieved by any such resolution on the ground that the amount of the contribution required to be made by an internal drainage board is inadequate, the board or council may, within six weeks after the date on which notice of the resolution is given by the [F304 appropriate agency] to the internal drainage board in question, appeal to the relevant Minister against the resolution.
- (2) On an appeal under this section the relevant Minister may, after—
  - (a) considering any objections made to him; and
  - (b) if he thinks fit, holding a local public inquiry,make such an order in the matter as he thinks just.
- (3) Where the [F304 appropriate agency] has acted on a resolution by virtue of section 139(5) above and an appeal is brought in respect of the resolution, the relevant Minister shall by his order direct such adjustment to be made in respect of any sums recovered or paid in pursuance of the resolution as may be necessary for giving effect to his decision.
- (4) Where the relevant Minister makes an order under this section, he shall lay before Parliament particulars of the matter in respect of which the appeal was made and of the reasons for his order.
- (5) Compliance with any order made by the relevant Minister under this section may be enforced by mandamus.
- (6) In this section “the relevant Minister”—
  - (a) in relation to an internal drainage district wholly in Wales or the drainage board for such a district, means the Secretary of State;

*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) in relation to an internal drainage district partly in Wales or the drainage board for such a district, means the Ministers; and
- (c) in any other case, means the Minister.

#### Textual Amendments

**F304** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)

**F342** Words in s. 140(1)(b) inserted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 3(3)** (with ss. 54(4)(7), 55(5)Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

#### Modifications etc. (not altering text)

**C128** S. 140 extended (1.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), **ss. 58(7)**, 76(2).

### 141 Precepts for recovery of contributions from internal drainage boards.

- (1) The [<sup>F304</sup>appropriate agency] may issue precepts to internal drainage boards requiring payment of any amount required to be contributed by those boards under section 139 above.
- (2) An internal drainage board shall pay, in accordance with any precept issued to them under this section, the amount thereby demanded.
- (3) It shall be the duty of the [<sup>F304</sup>appropriate agency] to prepare, in such form as the relevant Minister may direct, a statement of—
  - (a) the purposes to which the amount demanded by any precept issued by the [<sup>F304</sup>appropriate agency] under this section is intended to be applied; and
  - (b) the basis on which it is calculated;
 and an internal drainage board shall not be liable to pay the amount demanded by any such precept until they have received such a statement.
- (4) Compliance with any precept issued by the [<sup>F304</sup>appropriate agency] in accordance with this section may be enforced by mandamus.
- (5) In this section “the relevant Minister” has the same meaning as in section 140 above.

#### Textual Amendments

**F304** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)

### *Fisheries contributions*

### 142 Fisheries contributions.

- (1) Each of the Ministers shall have power, on an application made to him by the [<sup>F304</sup>appropriate agency], by order made by statutory instrument to make provision in relation to an area defined by the order—
  - (a) for the imposition on the owners and occupiers of fisheries in that area of requirements to pay contributions to the [<sup>F304</sup>appropriate agency], of such

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- amounts as may be determined under the order, in respect of the expenses of the carrying out in relation to that area of the [<sup>F304</sup>appropriate agency's] functions with respect to fisheries;
- (b) for such contributions to be paid or recovered in such manner, and to be refundable, in such circumstances as may be specified in or determined under the order.
- (2) Subsections [<sup>F343</sup>(2) to (6)] of section 115 above shall have effect in relation to the power conferred by subsection (1) above as they have effect in relation to the power conferred by subsection (1) of that section.
- (3) The reference in this section to the owners and occupiers of fisheries shall have the same meaning as any such reference in the <sup>M42</sup>Salmon and Freshwater Fisheries Act 1975.

#### Textual Amendments

**F304** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 276](#) (with [Sch. 7](#))

**F343** Words in s. 142(2) substituted (21.9.1995) by [1995 c. 25](#), s. 116, [Sch. 21 para. 2\(3\)](#) (with ss. 7(6), 115, 117); [S.I. 1995/1983](#), [art. 3](#)

#### Modifications etc. (not altering text)

**C129** S. 142 excluded (1.7.1999) by [S.I. 1999/1746](#), [arts. 1\(1\)](#), 4(1); [S.I. 1998/3178](#), [art. 3](#)

#### Marginal Citations

**M42** [1975 c. 51](#).

### Navigation tolls

#### 143 Power of [<sup>F304</sup>appropriate agency] to levy navigation tolls.

- (1) Where any navigable waters—
- (a) in England and Wales; or
- (b) in so much of the territorial sea adjacent to England and Wales as is included in [<sup>F344</sup>a flood risk management region],
- are not subject to the control of any navigation authority, harbour authority or conservancy authority, the [<sup>F304</sup>appropriate agency] may apply to the Secretary of State for an order imposing tolls in respect of the navigation of vessels in those waters.
- (2) An order under this section shall not be made unless the Secretary of State is satisfied that the cost of the maintenance or works in connection with the waters to which the order relates has been or will be increased as a result of the use of those waters for purposes of navigation.
- (3) Schedule 17 to this Act shall have effect with respect to the making of orders under this section.
- (4) Any tolls payable under this section in respect of the navigation of a vessel in any water referred to in subsection (1) above—
- (a) may be demanded from the person in charge of the vessel by any person authorised for that purpose by the [<sup>F304</sup>appropriate agency]; and

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- (b) if not paid on demand, may be recovered from either the person in charge of the vessel or the owner of the vessel.

#### Textual Amendments

**F304** Words in ss. 120-143 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 276** (with Sch. 7)

**F344** Words in s. 143(1)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 10**

#### Modifications etc. (not altering text)

**C130** S. 143 modified (01.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), **ss. 56(1)**, 76(2).

**C131** S. 143(4) modified (01.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), **ss. 56(2)**, 76(2).

### *Incidental power of the Authority to impose charges*

### *Interpretation of Chapter II*

## 145 Interpretation of Chapter II.

In this Chapter—

“agricultural buildings” has the meaning provided by section 26(4) of the <sup>M43</sup>General Rate Act 1967 as amended by the <sup>M44</sup>Rating Act 1971;

“agricultural land” means—

- (a) land used as arable, meadow or pasture ground only;
- (b) land used for a plantation or a wood or for the growth of saleable underwood; and
- (c) land exceeding one tenth of a hectare used for the purpose of poultry farming, market gardens, nursery grounds, orchards or allotments, including allotment gardens within the meaning of the <sup>M45</sup>Allotments Act 1922,

but does not include land occupied together with a house as a park, gardens (other than as aforesaid) or pleasure grounds, land kept or preserved mainly or exclusively for purposes of sport or recreation or land used as a racecourse;

“chargeable land” means the agricultural land and agricultural buildings in so much of [<sup>F345</sup>a flood risk management region] as does not fall within an internal drainage district, excluding rough grazing land and woodlands other than commercial woodlands;

“commercial woodlands” means woodlands managed on a commercial basis with a view to the realisation of profits;

“drainage” has the same meaning as in Part IV above;

“drainage charge” means general drainage charge or special drainage charge;

[<sup>F346</sup>“flood risk management region” [<sup>F347</sup>—

- (a) in relation to the Agency,] means the region of a Regional Flood and Coastal Committee, within the meaning of section 22 of the Flood and Water Management Act 2010 [<sup>F348</sup>, and

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(b) in relation to the NRBW, means Wales, within the meaning of section 158 of the Government of Wales Act 2006].

“rough grazing land” means land of either of the following descriptions, that is to say—

- (a) land used as pasture ground on which the vegetation consists solely or mainly of one or more of the following, that is to say, bracken, gorse, heather, rushes and sedge; and
- (b) land so used which is unsuitable for mowing by machine and on which the vegetation consists solely or mainly of grass of poor feeding value; and

“spray irrigation” has the same meaning as in Chapter II of Part II of this Act.]

**Textual Amendments**

**F345** Words in s. 145 substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 11(2)**

**F346** Words in s. 145 inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 11(3)**

**F347** Words in s. 145 inserted (14.7.2017) by [Environment \(Wales\) Act 2016 \(anaw 3\)](#), s. 88(3)(c), **Sch. 2 para. 20(5)(a)**; S.I. 2017/714, art. 2

**F348** Words in s. 145 inserted (14.7.2017) by [Environment \(Wales\) Act 2016 \(anaw 3\)](#), s. 88(3)(c), **Sch. 2 para. 20(5)(b)**; S.I. 2017/714, art. 2

**Marginal Citations**

**M43** 1967 c. 9.

**M44** 1971 c. 39.

**M45** 1922 c. 51.

**CHAPTER III**

**GRANTS AND LOANS**

*Grants to the <sup>F349</sup> Agency]*

**Textual Amendments**

**F349** Word in s. 146 cross-heading substituted (subject to other provisions of amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

<sup>F350</sup>**146** .....

**Textual Amendments**

**F350** S. 146 repealed (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 155**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

<sup>F351</sup>**147 Grants for drainage works.**

.....

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**Textual Amendments**

**F351** Ss. 147-149 repealed (17.3.2004 for E., 1.4.2004 for W.) by [Water Act 2003 \(c. 37\)](#), ss. 69(1), 105(3), [Sch. 9 Pt. 3](#); S.I. 2004/641, art. 2(a)(d); S.I. 2004/910, art. 2(1)(b)

**F351 148 Grants towards cost of flood warning systems.**

.....

**Textual Amendments**

**F351** Ss. 147-149 repealed (17.3.2004 for E., 1.4.2004 for W.) by [Water Act 2003 \(c. 37\)](#), ss. 69(1), 105(3), [Sch. 9 Pt. 3](#); S.I. 2004/641, art. 2(a)(d); S.I. 2004/910, art. 2(1)(b)

**F351 149 Other grants in respect of exercise of powers under Part VII for drainage purposes.**

.....

**Textual Amendments**

**F351** Ss. 147-149 repealed (17.3.2004 for E., 1.4.2004 for W.) by [Water Act 2003 \(c. 37\)](#), ss. 69(1), 105(3), [Sch. 9 Pt. 3](#); S.I. 2004/641, art. 2(a)(d); S.I. 2004/910, art. 2(1)(b)

**F352 150** .....

**Textual Amendments**

**F352** Ss. 150-153 repealed (1.4.1996) by 1995 c. 25, s. 120, [Sch. 22 para. 156](#), [Sch. 24](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)

*Borrowing by the Authority*

**F353 151** .....

**Textual Amendments**

**F353** Ss. 150-153 repealed (1.4.1996) by 1995 c. 25, s. 120, [Sch. 22 para. 156](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)

**F354 152** .....



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**Textual Amendments**

**F354** Ss. 150-153 repealed (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 156** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

<sup>F355</sup>**153** .....

**Textual Amendments**

**F355** Ss. 150-153 repealed (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 156** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**PART VII**

LAND AND WORKS POWERS

**Modifications etc. (not altering text)**

**C132** Pt. VII (ss. 154-186): Transfer of functions (1.4.1996) to the Agency by 1995 c. 25, s. **2(1)(a)(iv)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**CHAPTER I**

POWERS OF THE [<sup>F356</sup>APPROPRIATE AGENCY]

**Textual Amendments**

**F356** Words in Pt. 7 Ch. 1 heading substituted (1.4.2013) by **The Natural Resources Body for Wales (Functions) Order 2013** (S.I. 2013/755), art. 1(2), **Sch. 2 para. 277** (with Sch. 7)

*Provisions in relation to land*

**154 Compulsory purchase etc.**

- (1) The Agency [<sup>F357</sup>or the NRBW] may be authorised by [<sup>F358</sup>the relevant Minister] to purchase compulsorily any land anywhere in England and Wales which is required by the Agency [<sup>F357</sup>or the NRBW] for the purposes of, or in connection with, the carrying out of its functions.
- (2) The power of [<sup>F359</sup>the relevant Minister] under subsection (1) above shall include power—
  - (a) to authorise the acquisition of interests in, and rights over, land by the creation of new interests and rights; and

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- (b) by authorising the acquisition by the Agency [<sup>F360</sup>or, as the case may be, by the NRBW,] of any rights over land which is to be or has been acquired by the Agency [<sup>F361</sup>or the NRBW], to provide for the extinguishment of those rights.
- (3) Without prejudice to the generality of subsection (1) above, the land which the Agency [<sup>F362</sup>or the NRBW] may be authorised under that subsection to purchase compulsorily shall include land which is or will be required for the purpose of being given in exchange for, or for any right over, any other land which for the purposes of the <sup>M46</sup>Acquisition of Land Act 1981 is or forms part of a common, open space or a fuel or field garden allotment.
- (4) Subject to section 182 below, the Acquisition of Land Act 1981 shall apply to any compulsory purchase under subsection (1) above of any land by the Agency [<sup>F363</sup>or the NRBW]; and Schedule 3 to the said Act of 1981 shall apply to the compulsory acquisition under that subsection of rights by the creation of new rights.
- (5) Schedule 18 to this Act shall have effect for the purpose of modifying enactments relating to compensation and the provisions of the <sup>M47</sup>Compulsory Purchase Act 1965 in their application in relation to the compulsory acquisition under subsection (1) above of a right over land by the creation of a new right.
- (6) The provisions of Part I of the <sup>M48</sup>Compulsory Purchase Act 1965 (so far as applicable), other than sections 4 to 8, 10, 21, 27(1) and 31 and Schedule 4, shall apply in relation to any power to acquire land by agreement which is conferred, by virtue of any provision of this Act or otherwise (including section 37 of the 1995 Act (incidental general powers of the Agency) [<sup>F364</sup>or article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I.2012/1903)]), on the Agency [<sup>F365</sup>or the NRBW] as if—
- (a) any reference in those provisions to the acquiring authority were a reference to the Agency [<sup>F366</sup>or, as the case may be, the NRBW]; and
- (b) any reference to land subject to compulsory purchase were a reference to land which may be purchased by agreement under that power.
- [<sup>F367</sup>(7) In this section, in relation to the NRBW, references to functions have effect as references to relevant transferred functions.
- (8) In subsections (1) and (2), “the relevant Minister” means—
- (a) in relation to land in England, the Secretary of State; and
- (b) in relation to land in Wales, the Welsh Ministers.]

#### Textual Amendments

- F357** Words in s. 154(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 278(2)(a)** (with Sch. 7)
- F358** Words in s. 154(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 278(2)(b)** (with Sch. 7)
- F359** Words in s. 154(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 278(3)(a)** (with Sch. 7)
- F360** Words in s. 154(2)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 278(3)(b)(i)** (with Sch. 7)
- F361** Words in s. 154(2)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 278(3)(b)(ii)** (with Sch. 7)
- F362** Words in s. 154(3) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 278(4)** (with Sch. 7)

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- F363** Words in s. 154(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(4)** (with Sch. 7)
- F364** Words in s. 154(6) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(5)(a)** (with Sch. 7)
- F365** Words in s. 154(6) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(5)(b)** (with Sch. 7)
- F366** Words in s. 154(6)(a) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(5)(c)** (with Sch. 7)
- F367** S. 154(7)(8) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 278(6)** (with Sch. 7)

#### Modifications etc. (not altering text)

- C133** S. 154 applied (with modifications) (W.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (Wales) Order 2011 (S.I. 2011/2829), arts. 1, **4(1)**
- C134** S. 154 applied (with modifications) (W.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (Wales) Order 2011 (S.I. 2011/2829), arts. 1, **3(1)**
- C135** S. 154 applied (with modifications) (E.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (England) Order 2011 (S.I. 2011/2855), arts. 1(c), **4**
- C136** S. 154 applied (with modifications) (E.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (England) Order 2011 (S.I. 2011/2855), arts. 1(c), **3(1)** (with art. 3(3)(4))

#### Marginal Citations

- M46** 1981 c. 67.  
**M47** 1965 c. 56.  
**M48** 1965 c. 56.

## 155 Accretions of land resulting from drainage works.

- (1) If the relevant Minister certifies that, as the result of—
- any drainage works carried out or improved, or proposed to be carried out or improved, by the Agency [<sup>F368</sup>or the NRBW] in connection with the tidal waters of a main river; or
  - any drainage works transferred from a drainage body to the Agency [<sup>F368</sup>or the NRBW] in pursuance of this Act or the <sup>M49</sup>Land Drainage Act 1991,
- there has been or is likely to be any accretion of land, the powers of the Agency [<sup>F369</sup>and the NRBW] by virtue of this Act, for the purpose of carrying out its functions [<sup>F370</sup>or, as the case may be, its relevant transferred functions], to acquire land or any interest in or right over land by agreement or compulsorily shall include power so to acquire the land mentioned in subsection (2) below.
- (2) The land mentioned in subsection (1) above is—
- the accretion of land or the land to which the accretion will, if it takes place, be added, together with any right to reclaim or embank the accretion; and
  - such other land as is reasonably required for the purpose of reclamation of the accretion or for the enjoyment of it when reclaimed.
- (3) An agreement or order with respect to the acquisition of any land or rights by virtue of this section may provide for the transfer to the Agency [<sup>F371</sup>or, as the case may be, the NRBW] of any liability for the upkeep, maintenance and repair of any bank or drainage work or of any other like liability.

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- (4) Where the value of any land or right is increased by the carrying out or proposed carrying out of drainage works by the Agency [<sup>F372</sup>or, as the case may be, the NRBW] the amount of the increase shall not be taken into account in assessing the compensation in respect of the compulsory acquisition of it.
- (5) Where, by reason of a certificate having been given by the relevant Minister under this section in relation to any drainage works, the Agency [<sup>F373</sup>or, as the case may be, the NRBW] has acquired any land or right and a grant has been made out of public moneys for defraying the cost or part of the cost of the carrying out of the works, the Agency [<sup>F373</sup>or, as the case may be, the NRBW] shall—
- (a) on being so required by the Crown Estate Commissioners; and
  - (b) on payment by the Commissioners to the Agency [<sup>F374</sup>or the NRBW] of the sum paid by the Agency [<sup>F374</sup>or the NRBW] in respect of the acquisition of the land or right, together with the amount of any costs incurred by the [<sup>F375</sup>Agency][<sup>F374</sup>or the NRBW] in connection with the acquisition, transfer the land or right to the Commissioners or to any person nominated by them.
- (6) If the Agency [<sup>F376</sup>or, as the case may be, the NRBW], on being so required by the Crown Estate Commissioners in pursuance of subsection (5) above, fail to transfer to the Commissioners any land or right, the relevant Minister may by a vesting order transfer the land or right to the Commissioners or to a person nominated by them; and, for the purposes of this subsection, the relevant Minister shall be deemed to be a competent authority within the meaning of section 9 of the <sup>M50</sup>Law of Property Act 1925.
- (7) In this section—
- “banks” has the same meaning as in Part IV of this Act;
- “drainage body” has the same meaning as in section 108 above;
- “the relevant Minister”—
- (a) in relation to England, means the Minister; and
  - (b) in relation to Wales, means the Secretary of State.

#### Textual Amendments

- F368** Words in s. 155(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 279(2)(a)** (with Sch. 7)
- F369** Words in s. 155(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 279(2)(b)** (with Sch. 7)
- F370** Words in s. 155(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 279(2)(c)** (with Sch. 7)
- F371** Words in s. 155(3) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 279(3)** (with Sch. 7)
- F372** Words in s. 155(4) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 279(3)** (with Sch. 7)
- F373** Words in s. 155(5) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 279(4)(a)** (with Sch. 7)
- F374** Words in s. 155(5)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 279(4)(b)** (with Sch. 7)
- F375** Word in s. 155 substituted (subject to the other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120](#), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**

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**F376** Words in s. 155(6) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 279(5)** (with Sch. 7)

#### Marginal Citations

**M49** 1991 c. 59.

**M50** 1925 c. 20.

## 156 Acquisition of land etc. for fisheries purposes.

- (1) [<sup>F377</sup>Without prejudice to section 37 of the 1995 Act (incidental general powers of the Agency)] [<sup>F378</sup>or article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I.2012/1903)], the powers conferred on the Agency [<sup>F379</sup>or, as the case may be, the NRBW,] by [<sup>F380</sup>those provisions] and section 154 above include power to purchase or take on lease (either by agreement or, if so authorised, compulsorily)—
- (a) any dam, fishing weir, fishing mill dam, fixed engine or other artificial obstruction and any fishery attached to or worked in connection with any such obstruction;
  - (b) so much of the bank adjoining a dam as may be necessary for making or maintaining a fish pass for the purposes of section 10 of the <sup>M51</sup>Salmon and Freshwater Fisheries Act 1975; and
  - (c) for the purpose of erecting and working a fixed engine, any fishery land or foreshore together with any easement over any adjoining land necessary for securing access to the fishery land or foreshore so acquired.
- (2) [<sup>F377</sup>Without prejudice to section 37 of the 1995 Act (incidental general powers of the Agency)] [<sup>F381</sup>or article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I.2012/1903)], the Agency [<sup>F382</sup>or, as the case may be, the NRBW,] may—
- (a) either alter or remove an obstruction acquired in the exercise of the powers mentioned in subsection (1) above; or
  - (b) by itself or its lessees use or work in any lawful manner the obstruction for fishing purposes and exercise the right by any fishery so acquired,
- subject, in the case of an obstruction or fishery acquired by way of lease, to the terms of the lease.
- (3) Expressions used in this section and in the Salmon and Freshwater Fisheries Act 1975 have the same meanings in this section as in that Act.

#### Textual Amendments

**F377** Words in s. 156(1)(2) substituted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 158** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F378** Words in s. 156(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 280(2)(a)** (with Sch. 7)

**F379** Words in s. 156(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 280(2)(b)** (with Sch. 7)

**F380** Words in s. 156(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 280(2)(c)** (with Sch. 7)

**F381** Words in s. 156(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 280(3)(a)** (with Sch. 7)

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**F382** Words in s. 156(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 280(3)(b)** (with Sch. 7)

#### Marginal Citations

**M51** 1975 c. 51.

### 157 Restriction on disposals of compulsorily acquired land.

- (1) The Agency [<sup>F383</sup>and the NRBW] shall not dispose of any of its compulsorily acquired land, or of any interest or right in or over any of that land, except with the consent of, or in accordance with a general authorisation given by, one of the Ministers.
- (2) A consent or authorisation for the purposes of this section—
  - (a) shall be set out in a notice served on the Agency [<sup>F384</sup>or, as the case may be, the NRBW] by the Minister who is giving the consent or authorisation; and
  - (b) in the case of an authorisation, may be combined with an authorisation for the purposes of section 156 of the <sup>M52</sup>Water Industry Act 1991 (restrictions on disposals of land by a water or sewerage undertaker).
- (3) A consent or authorisation for the purposes of this section may be given on such conditions as the Minister who is giving it considers appropriate.
- (4) Without prejudice to the generality of subsection (3) above, the conditions of a consent or authorisation for the purposes of this section may include a requirement that, before there is any disposal, an opportunity of acquiring the land in question, or an interest or right in or over that land, is to be made available to such person as may be specified in or determined under provision contained in the notice setting out the consent or authorisation in question.
- (5) A requirement under subsection (4) above may require the opportunity to be made available in such manner and on such terms as may be specified in or determined under provision contained in the notice setting out the consent or authorisation in question.
- <sup>F385</sup>(6) In this section “compulsorily acquired land”, in relation to the Agency, means any land of the Agency which—
  - (a) was acquired by the Agency compulsorily under the provisions of section 154 above or of an order under section 168 below;
  - (b) was acquired by the Agency at a time when it was authorised under those provisions to acquire the land compulsorily;
  - (c) being land which has been transferred to the Agency from the Authority by section 3 of the 1995 Act, was acquired by the Authority—
    - (i) compulsorily, under the provisions of section 154 above or of an order under section 168 below or under the provisions of section 151 of the <sup>M53</sup>Water Act 1989 or of an order under section 155 of that Act; or
    - (ii) at a time when it was authorised under those provisions to acquire the land compulsorily;
  - (d) being land—
    - (i) which has been so transferred, and
    - (ii) which was transferred to the Authority in accordance with a scheme under Schedule 2 to the <sup>M54</sup>Water Act 1989,

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was acquired by a predecessor of the Authority compulsorily under so much of any enactment in force at any time before 1st September 1989 as conferred powers of compulsory acquisition; or

- (e) being land transferred as mentioned in sub-paragraphs (i) and (ii) of paragraph (d) above, was acquired by such a predecessor at a time when it was authorised to acquire the land by virtue of any such powers as are mentioned in that paragraph.]

[<sup>F386</sup>(7) In this section “compulsorily acquired land”, in relation to the NRBW, means any land of the NRBW which—

- (a) was acquired by the NRBW compulsorily under the provisions of section 154 above or of an order under section 168 below;
- (b) was acquired by the NRBW at a time when it was authorised under those provisions to acquire the land compulsorily; or
- (c) being land which has been transferred to the NRBW from the Agency in accordance with a scheme made under section 23 of the Public Bodies Act 2011, was compulsorily acquired land of the Agency within the meaning of subsection (6).]

#### Textual Amendments

**F383** Words in s. 157(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 281(2)** (with Sch. 7)

**F384** Words in s. 157(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 281(3)** (with Sch. 7)

**F385** S. 157(6) substituted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 159** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F386** S. 157(7) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 281(4)** (with Sch. 7)

#### Modifications etc. (not altering text)

**C137** S. 157 applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), **3(2)**

**C138** S. 157 applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), **4(2)**

**C139** S. 157 applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, **3(2)**

**C140** S. 157 applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, **4(2)**

#### Marginal Citations

**M52** 1991 c. 56.

**M53** 1989 c. 15.

**M54** 1989 c. 29.

### *Works agreements for water resources purposes*

#### **158 Works agreements for water resources purposes.**

- (1) Without prejudice to the generality of the powers of the [<sup>F387</sup>Agency] by virtue of section 37 of the 1995 Act (incidental general powers of the Agency)[<sup>F388</sup>, or (as

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the case may be) of the NRBW by virtue of article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I.2012/1903),] but subject to subsection (2) below, those powers shall include power to enter into an agreement with any water undertaker, with any sewerage undertaker, with any local authority or joint planning board, or with the owner or occupier of any land, with respect to any one or more of the following matters, that is to say—

- (a) the carrying out by any party to the agreement of works which the [F389 appropriate agency] considers necessary or expedient in connection with the carrying out of any of the [F389 appropriate agency's] functions by virtue of Part II of this Act;
  - (b) the maintenance by any party to the agreement of works carried out in pursuance of the agreement;
  - (c) provision for the [F390 appropriate agency] to use, or have access to, any land for any purpose connected with the carrying out of any of those functions;
  - (d) the manner in which any reservoir is to be operated.
- (2) The Secretary of State may by a direction to the [F391 appropriate agency] direct that, in such cases or classes of cases as are specified in the direction, the [F391 appropriate agency] shall not enter into any such agreement as is mentioned in subsection (1) above except with his consent.
- (3) An agreement such as is mentioned in subsection (1) above may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the [F392 appropriate agency] necessary or expedient for the purposes of the agreement.
- (4) Where an agreement such as is mentioned in subsection (1) above is made with an owner of land, other than registered land, and the agreement provides that the provisions of this subsection shall have effect in relation to the agreement—
- (a) the agreement may be registered as a land charge under the <sup>M55</sup>Land Charges Act 1972 as if it were a charge affecting land falling within paragraph (iii) of Class D;
  - (b) the provisions of section 4 of that Act (which relates to the effect of non-registration) shall apply as if the agreement were such a land charge; and
  - (c) subject to the provisions of section 4 of that Act, the agreement shall be binding upon any successor of that owner to the same extent as it is binding upon that owner, notwithstanding that it would not have been binding upon that successor apart from the provisions of this paragraph.
- (5) Where an agreement such as is mentioned in subsection (1) above is made with an owner of land which is registered land, and the agreement provides that the provisions of this subsection shall have effect in relation to the agreement—
- [F393](a) the agreement may be the subject of a notice in the register of title under the Land Registration Act 2002 as if it were an interest affecting the registered land;
  - (b) the provisions of sections 28 to 30 of that Act (effect of dispositions of registered land on priority of adverse interests) shall apply as if the agreement were such an interest;]
  - (c) [F394]subject to the provisions of those sections,] the agreement shall be binding upon any successor of that owner to the same extent as it is binding upon



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that owner, notwithstanding that it would not have been binding upon that successor apart from the provisions of this paragraph.

(6) In this section—

“registered land” has the same meaning as in the [<sup>F395</sup>Land Registration Act 2002]; and

“successor”, in relation to an agreement with the owner of any land, means a person deriving title or otherwise claiming under that owner, otherwise than in right of an interest or charge to which the interest of the owner was subject immediately before the following time, that is to say—

- (a) where the land is not registered land, the time when the agreement was made; and
- (b) where the land is registered land, the time when the notice of the agreement was registered.

#### Textual Amendments

- F387** Word in s. 158 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F388** Words in s. 158(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 282(2)(a)** (with Sch. 7)
- F389** Words in s. 158(1)(a) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 282(2)(b)** (with Sch. 7)
- F390** Words in s. 158(1)(c) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 282(2)(c)** (with Sch. 7)
- F391** Words in s. 158(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 282(3)** (with Sch. 7)
- F392** Words in s. 158(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 282(4)** (with Sch. 7)
- F393** S. 158(5)(a)(b) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 25(2)(a)** (with s. 129); S.I. 2003/1725, **art. 2(1)**
- F394** Words in s. 158(5)(c) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 25(2)(b)** (with s. 129); S.I. 2003/1725, **art. 2(1)**
- F395** Words in s. 158(6) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 25(3)** (with s. 129); S.I. 2003/1725, **art. 2(1)**

#### Modifications etc. (not altering text)

- C141** S. 158 applied (1.4.2006) by Water Act 2003 (c. 37), **ss. 33(3)(b)**, 105(3); S.I. 2006/984, **art. 2(p)**
- C142** S. 158(1) applied (with modifications) (4.6.1996) by S.I. 1996/1243, **art. 18**, **Sch. 5 para. 6(2)(b)**

#### Marginal Citations

- M55** 1972 c. 61.

### *General pipe-laying powers*

#### **159 Powers to lay pipes in streets.**

(1) Subject to the following provisions of this Part, the [<sup>F396</sup>appropriate agency] shall, for the purpose of carrying out its functions, have power—

- (a) to lay a relevant pipe in, under or over any street and to keep that pipe there;

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- (b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in, under or over any street; and
  - (c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above, including for those purposes the following kinds of works, that is to say—
    - (i) breaking up or opening a street;
    - (ii) tunnelling or boring under a street;
    - (iii) breaking up or opening a sewer, drain or tunnel;
    - (iv) moving or removing earth and other materials.
- [<sup>F397</sup>(1A) The [<sup>F396</sup>appropriate agency] may carry out work within subsection (1)(a) to (c) if—
- (a) it thinks the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010, and
  - (b) the purpose of the work is to manage a flood risk (within the meaning of that Act) from (i) the sea, or (ii) a main river.]
- (2) Without prejudice to the generality of subsection (1)(c) above, the [<sup>F396</sup>appropriate agency] shall have power to erect and keep in any street notices indicating the position of such underground accessories for its relevant pipes as may be used for controlling the flow of water in those pipes.
- (3) The power conferred by subsection (2) above shall include power to attach any such notice as is mentioned in that subsection to any building, fence or other structure which is comprised in premises abutting on the street in question.
- (4) Until the coming into force of its repeal by the <sup>M56</sup>New Roads and Street Works Act 1991 section 20 of the <sup>M57</sup>Highways Act 1980 (works in special roads) shall have effect as if the reference in that section to a power under any enactment to lay down or erect apparatus included a reference to any power to lay any pipe which is conferred by this section.
- (5) In this section references to a relevant pipe are references to a resource main or discharge pipe and references to laying such a pipe shall include references—
- (a) to the laying of any drain or sewer for any of the purposes specified in subsection (6) below; and
  - (b) to the construction of a watercourse for any of those purposes.
- (6) The purposes mentioned in subsection (5) above are—
- (a) intercepting, treating or disposing of any foul water arising or flowing upon any land; or
  - (b) otherwise preventing the pollution—
    - (i) of any waters, whether on the surface or underground, which belong to the [<sup>F396</sup>appropriate agency] or any water undertaker or from which the [<sup>F396</sup>appropriate agency] or any water undertaker is authorised to take water;
    - (ii) without prejudice to sub-paragraph (i) above, of any reservoir which belongs to or is operated by the [<sup>F396</sup>appropriate agency] or any water undertaker or which the [<sup>F396</sup>appropriate agency] or any water undertaker is proposing to acquire or construct for the purpose of being so operated; or

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- (iii) of any underground strata from which the [<sup>F396</sup>appropriate agency] or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under Chapter II of Part II of this Act.
- (7) References in this section to maintaining a pipe include references to cleansing it and references to altering a pipe include references to altering its size or course, to moving or removing it and to replacing it with a pipe which is of the same description of relevant pipe as the pipe replaced.

#### Textual Amendments

**F396** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

**F397** S. 159(1A) inserted (19.7.2011 for E., 1.10.2011 for W.) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 2 para. 45** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2) (d)

#### Marginal Citations

**M56** 1991 c. 22.

**M57** 1980 c. 66.

## 160 Power to lay pipes in other land.

- (1) Subject to the following provisions of this Part, the [<sup>F396</sup>appropriate agency] shall, for the purpose of carrying out its functions, have power—
- to lay a relevant pipe (whether above or below the surface) in any land which is not in, under or over a street and to keep that pipe there;
  - to inspect, maintain, adjust, repair or alter any relevant pipe which is in any such land;
  - to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above.
- [<sup>F398</sup>(1A) The [<sup>F396</sup>appropriate agency] may carry out work within subsection (1)(a) to (c) if—
- it thinks the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010, and
  - the purpose of the work is to manage a flood risk (within the meaning of that Act) from (i) the sea, or (ii) a main river.]
- (2) The powers conferred by this section shall be exercisable only after reasonable notice of the proposed exercise of the power has been given to the owner and to the occupier of the land where the power is to be exercised.
- (3) Subject to subsection (4) below, in relation to any exercise of the powers conferred by this section for the purpose of laying or altering a relevant pipe, the minimum period that is capable of constituting reasonable notice for the purposes of subsection (2) above shall be deemed—
- where the power is exercised for the purpose of laying a relevant pipe otherwise than in substitution for an existing pipe of the same description, to be three months; and
  - where the power is exercised for the purpose of altering an existing pipe, to be forty-two days.

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- (4) In this section references to a relevant pipe are references to a resource main or discharge pipe; and subsection (7) of section 159 above shall apply for the purposes of this section as it applies for the purposes of that section.

#### Textual Amendments

- F396** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)
- F398** S. 160(1A) inserted (19.7.2011 for E., 1.10.2011 for W.) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 2 para. 46** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2) (d)

*[<sup>F399</sup>Restoration and improvement works for controlled waters*

#### Textual Amendments

- F399** Ss. 161-161AB substituted for s. 161 (22.12.2009) by [Water Resources Act 1991 \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/3104\)](#), regs. 1(c), **5** (with reg. 7)

### 161. Anti-pollution works and operations

- (1) This section applies where it appears to the [<sup>F396</sup>appropriate agency] that any poisonous, noxious or polluting matter or any waste matter is or has been present in, or is likely to enter, any controlled waters.
- (2) In a case where the matter appears to be or to have been present in the controlled waters, the [<sup>F396</sup>appropriate agency] shall be entitled to carry out works and operations for any of the following purposes—
- (a) removing or disposing of the matter;
  - (b) remedying or mitigating any pollution caused by its presence in the waters; or
  - (c) restoring (so far as it is reasonably practicable to do so) 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) In a case where the matter appears to be likely to enter the controlled waters, the [<sup>F396</sup>appropriate agency] shall be entitled to carry out works and operations for the purpose of preventing it from doing so.
- (4) The [<sup>F396</sup>appropriate agency] shall be entitled to carry out investigations for the purpose of establishing any of the following—
- (a) the nature of the matter,
  - (b) the source of the matter;
  - (c) the nature and effects of any pollution caused or likely to be caused by the presence of the matter; and
  - (d) the identity of any responsible persons.
- (5) Without prejudice to the power of the [<sup>F396</sup>appropriate agency] to carry out those investigations, the powers conferred by subsection (2) or (3) shall only be exercisable in a case where—

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- (a) the [<sup>F396</sup>appropriate agency] considers it necessary to carry out forthwith any works or operations falling within that subsection; or
  - (b) it appears to the [<sup>F396</sup>appropriate agency] , after reasonable enquiry, that no responsible person can be found on whom to serve a works notice.
- (6) In this section “responsible person” means a person who has caused or knowingly permitted the matter—
- (a) to be present in the controlled waters; or
  - (b) to be at a place from which it was likely, in the opinion of the [<sup>F396</sup>appropriate agency], to enter the controlled waters.

#### Textual Amendments

**F396** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

#### Modifications etc. (not altering text)

**C143** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)

**C144** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

### 161ZA. Other works and operations in respect of harm to controlled waters

- (1) This section applies where it appears to the [<sup>F396</sup>appropriate agency] that any controlled waters are being or have been harmed, or are likely to be harmed, by any event, process or other source of potential harm (and it is immaterial whether the source of potential harm has been identified).
- (2) In this section “harm” means any adverse impact on the condition of any hydromorphological quality element affecting the controlled waters that would be likely to prevent the achievement of the environmental objectives applicable to the controlled waters (whether by itself or in combination with other factors), other than an adverse impact caused by the entry into or presence in those waters of any poisonous, noxious or polluting matter or waste matter.
- (3) In subsection (2) “environmental objectives” and “hydromorphological quality element” have the same meaning as in the Water Framework Directive.
- (4) The [<sup>F396</sup>appropriate agency] shall be entitled to carry out works and operations for any of the following purposes (so far as it is reasonably practicable to achieve them)—
  - (a) removing the source of potential harm;
  - (b) preventing any harm or further harm being caused to the controlled waters;
  - (c) in a case where the controlled waters are being or have been harmed—
    - (i) remedying or mitigating the effects of the harm;
    - (ii) restoring the waters, including any flora and fauna dependent on the aquatic environment of the waters, to their state immediately before any harm was caused.
- (5) The [<sup>F396</sup>appropriate agency] shall be entitled to carry out investigations for the purpose of establishing any of the following—

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- (a) the source of any harm or potential harm to the controlled waters;
  - (b) the nature and effects of any harm caused or likely to be caused to those waters; and
  - (c) the identity of any responsible persons.
- (6) Without prejudice to the power of the [F396appropriate agency] to carry out those investigations, the powers conferred by subsection (4) shall only be exercisable in a case where—
- (a) the [F396appropriate agency] considers it necessary to carry out forthwith any works or operations falling within that subsection; or
  - (b) it appears to the [F396appropriate agency] , after reasonable enquiry, that no responsible person can be found on whom to serve a works notice.
- (7) In this section “responsible person” means a person who has caused or knowingly permitted—
- (a) any harm to be caused to the controlled waters; or
  - (b) a source of potential harm to exist that is likely, in the opinion of the [F396appropriate agency], to cause harm to the controlled waters.

#### Textual Amendments

**F396** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

#### Modifications etc. (not altering text)

**C143** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)

**C144** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

### 161ZB. Works and operations for improving controlled waters

- (1) This section applies where it appears to the [F396appropriate agency] that—
  - (a) the condition of any hydromorphological quality element affecting any controlled waters is unsatisfactory; and
  - (b) it is possible to improve the hydromorphological quality element by carrying out works or operations.
- (2) For the purposes of this section the condition of a hydromorphological quality element affecting the controlled waters is unsatisfactory if (whether by itself or in combination with other factors) if it is likely to prevent the waters from achieving the applicable environmental objectives.
- (3) In this section “environmental objectives” and “hydromorphological quality element” have the same meaning as in the Water Framework Directive.
- (4) The [F396appropriate agency] shall be entitled to carry out works and operations for the purpose of improving the condition of the hydromorphological quality element in question with a view to achieving (or contributing to the achievement of) the applicable environmental objectives.

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- (5) The [F396appropriate agency] shall be entitled to carry out investigations for the purpose of establishing why the condition of the hydromorphological quality element in question is unsatisfactory.
- (6) Without prejudice to the power of the [F396appropriate agency] to carry out those investigations, the powers conferred by subsection (4) shall only be exercisable if it appears to the [F396appropriate agency] that it is unable to secure that the necessary works or operations are carried out by exercising its powers under section 161 or 161ZA or by serving a works notice on any responsible person.

#### Textual Amendments

**F396** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

#### Modifications etc. (not altering text)

**C143** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)

**C144** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

### 161ZC. Sections 161 to 161ZB: supplementary

- (1) Nothing in sections 161 to 161ZB shall entitle the [F396appropriate agency] to impede or prevent the making of any discharge in pursuance of [F400an environmental permit].
- (2) Where the [F396appropriate agency] carries out any works, operations or investigations under any of the powers conferred by section 161 or 161ZA it shall, subject to subsection (3), be entitled to recover the expenses reasonably incurred in doing so from any responsible person (within the meaning of the section conferring the powers in question).
- (3) No expenses are recoverable from a person for any works, operations or investigations in respect of water from an abandoned mine or an abandoned part of a mine which that person permitted to enter any controlled waters or to reach a place from which it was likely, in the opinion of the [F396appropriate agency], to enter any controlled waters.
- (4) Subsection (3) does 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.
- <sup>F401</sup>(5) .....
- (6) Nothing in sections 161, 161ZA and 161ZB—
  - (a) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under any of those sections; or
  - (b) affects any restriction imposed by or under any other enactment, whether public local or private.
- (7) In this section—
  - “expenses” includes costs;
  - “mine” has the same meaning as in the Mines and Quarries Act 1954;
  - “works notice” means a notice under section 161A.

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*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (8) In sections 161, 161ZA and 161ZB and this section “controlled waters” has the same meaning as in Part 3 of this Act and in sections 161ZA and 161ZB, and “Water Framework Directive” has the same meaning as in section 93(7) of this Act.

#### Textual Amendments

- F396** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)
- F400** Words in s. 161ZC(1) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(8)(a)** (with reg. 1(2), Sch. 4)
- F401** S. 161ZC(5) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(m), **Sch. 28** (with reg. 1(2), Sch. 4)

#### Modifications etc. (not altering text)

- C143** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)
- C144** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

### 161A. Notices requiring persons to carry out works and operations

- (1) Where it appears to the [<sup>F396</sup>appropriate agency] that—
- (a) any poisonous, noxious or polluting matter or any waste matter is or has been present in, or is likely to enter, any controlled waters (so that section 161 applies), or
  - (b) any controlled waters are being or have been harmed, or are likely to be harmed, by any event, process or other source of potential harm (so that section 161ZA applies),
- the [<sup>F396</sup>appropriate agency] shall be entitled to serve a works notice on any responsible person.
- (2) In this section “responsible person” has the same meaning as in section 161 or 161ZA (as the case may be).
- (3) For the purposes of this section a works notice is a notice requiring the person on whom it is served to carry out such works or operations as may be specified in the notice.
- (4) The works or operations that may be so specified are works or operations which may be carried out under section 161(2) or (3) or section 161ZA(4) (as the case may be).
- (5) Where the [<sup>F396</sup>appropriate agency] has carried out any such investigations as are mentioned in sections 161(4) or 161ZA(5) and serves a works notice on a responsible person in connection with the matters to which the investigations relate it shall (unless the notice is quashed or withdrawn) be entitled to recover from that person the costs or expenses reasonably incurred in carrying out those investigations.
- (6) The appropriate national authority may, if it thinks fit in relation to any person, give directions to the [<sup>F396</sup>appropriate agency] as to whether or how it should exercise its powers under this section or section 161AA.



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- (7) In this section and sections 161AA and 161AB “controlled waters” has the same meaning as in Part 3 of this Act.

#### Textual Amendments

**F396** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

#### Modifications etc. (not altering text)

**C143** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)

**C144** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

### 161AA. Works notices: form etc

- (1) 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 the [<sup>F396</sup>appropriate agency] to carry out any works or operations under section 161(5)(a) or 161ZA(6)(a).
- (2) Before serving a works notice on any person, the [<sup>F396</sup>appropriate agency] shall reasonably endeavour to consult that person concerning the works or operations which are to be specified in the notice.
- (3) The appropriate national authority may by regulations make provision for or in connection with—
- (a) the form or content of works notices;
  - (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 (2) or regulations made by virtue of paragraph (b); or
  - (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.
- (4) A works notice shall not be regarded as invalid or as invalidly served by reason only of a failure to comply with the requirements of subsection (2) or of regulations made by virtue of paragraph (b) of subsection (3).
- (5) In this section and section 161A, “appropriate national authority” means—
- (a) in relation to England, the Secretary of State; and
  - (b) in relation to Wales, the Welsh Ministers.
- (6) The power to make regulations under this section shall be exercisable by statutory instrument subject—
- (a) in the case of regulations made by the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament; and
  - (b) in the case of regulations made by the Welsh Ministers, to annulment in pursuance of a resolution of the National Assembly for Wales.

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- (7) In this section,—
- (a) paragraph (1) of section 219 does not apply; and
  - (b) in paragraph (2) of that section, references to “the Ministers” or the “the Secretary of State” shall be taken to be references to the appropriate national authority.

**Textual Amendments**

**F396** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

**Modifications etc. (not altering text)**

**C143** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)

**C144** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

**161AB. Works notices: exceptions etc**

- (1) Nothing in section 161A shall entitle the [<sup>F396</sup>appropriate agency] to require the carrying out of any works or operations which would impede or prevent the making of any discharge in pursuance of [<sup>F402</sup>an environmental permit] .
- (2) No works notice shall be served on any person requiring him to carry out any works or operations in respect of water from an abandoned mine or an abandoned part of a mine which that person permitted to enter any controlled waters or to reach a place from which it was likely, in the opinion of the [<sup>F396</sup>appropriate agency], to enter any controlled waters.
- (3) Subsection (2) does not apply to the service of a notice on 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.

<sup>F403</sup>(4) . . . . .

- (5) In this section “mine” has the same meaning as in the Mines and Quarries Act 1954.]

**Textual Amendments**

**F396** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

**F402** Words in s. 161AB(1) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(8)(b)** (with reg. 1(2), Sch. 4)

**F403** S. 161AB(4) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(n), **Sch. 28** (with reg. 1(2), Sch. 4)

**Modifications etc. (not altering text)**

**C143** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), **Sch. 1**)

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**C144** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

<sup>F404</sup>**161B Grant of, and compensation for, rights of entry etc.**

- (1) A works notice may require a person to carry out works or operations in relation to any land or waters notwithstanding that he is not entitled to carry out those works or operations.
- (2) Any person whose consent is required before any works or 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 notice is served to comply with any requirements imposed by the works notice.
- (3) Before serving a works notice, the [<sup>F396</sup>appropriate agency] 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.

- [<sup>F405</sup>(6) Without prejudice to the generality of the regulations that may be made by virtue of subsection (5), regulations by virtue of that subsection may—
- (a) provide for the basis on which any amount to be paid by way of compensation under this section is to be assessed;
  - (b) without prejudice to the generality of paragraph (a) above, provide for compensation under this section to be payable in respect of—
    - (i) any effect of any rights being granted, or
    - (ii) any consequence of the exercise of any rights which have been granted;
  - (c) provide for the times at which any entitlement to compensation under this section is to arise or at which any such compensation is to become payable;
  - (d) provide for the persons or bodies by whom, and the manner in which, any dispute—
    - (i) as to whether any, and (if so) how much and when, compensation under this section is payable, or
    - (ii) as to the person to or by whom it shall be paid,is to be determined;
  - (e) provide for when or how applications may be made for compensation under this section;

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- (f) without prejudice to the generality of paragraph (d) above, provide for when or how applications may be made for the determination of any such disputes as are mentioned in that paragraph;
- (g) without prejudice to the generality of paragraphs (e) and (f) above, prescribe the form in which any such applications as are mentioned in those paragraphs are to be made;
- (h) make provision similar to any provision made by paragraph 8 of Schedule 19;
- (i) make different provision for different cases, including different provision in relation to different persons or circumstances;
- (j) include such incidental, supplemental, consequential or transitional provision as the Secretary of State considers appropriate.]

(7) In this section—

“prescribed” means prescribed in regulations made by the Secretary of State;

“relevant land” means—

- (a) any land or waters in relation to which the works notice in question requires, or may require, works or 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 161A above.

#### Textual Amendments

**F396** Words in ss. 159-161B substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 283](#) (with [Sch. 7](#))

**F404** Ss. 161A-161D inserted (21.9.1995 for specified purposes, 16.3.1999 for other specified purposes and otherwise 29.4.1999) by [1995 c. 25, s. 120](#), [Sch. 22 para. 162](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1995/1983](#), [art. 3](#); [S.I. 1999/803](#), [art. 2](#); [S.I. 1999/1301](#), [art. 2](#)

**F405** S. 161B(6) substituted (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), [reg. 1\(1\)\(b\)](#), [Sch. 21 para. 21\(6\)](#) (with [reg. 72](#), [Sch. 4](#))

#### Modifications etc. (not altering text)

**C143** Ss. 161-161D modified by [S.I. 2010/675](#), [Sch. 23 Pt. 8 para. 3 Table 9](#) (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), [reg. 1\(b\)](#), [Sch. 1](#))

**C144** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016 \(S.I. 2016/1154\)](#), [reg. 1\(1\)](#), [Sch. 23 Pt. 7 paras. 1\(3\)](#), [2](#) (with [regs. 1\(3\)](#), [77-79](#), [Sch. 4](#))

**C145** S. 161B applied (with modifications) (1.4.2006) by [Water Act 2003 \(c. 37\)](#), [ss. 4\(3\)\(b\)](#), [105\(3\)](#); [S.I. 2006/984](#), [art. 2\(d\)](#)

#### <sup>F406</sup> 161CAppeals 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

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- (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.
- (4) Regulations under subsection (3) above may (among other things)—
  - (a) include provisions comparable to those in section 290 of the <sup>M58</sup>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 161A above.
- (6) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals).

#### Textual Amendments

**F406** Ss. 161A-161D inserted (21.9.1995 for specified purposes, 16.3.1999 for other specified purposes and otherwise 29.4.1999) by 1995 c. 25, s. 120, **Sch. 22 para. 162** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 1999/803, **art. 2**; S.I. 1999/1301, **art. 2**

#### Modifications etc. (not altering text)

**C143** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011](#) (S.I. 2011/2043), reg. 1(b), **Sch. 1**)

**C144** Ss. 161-161D modified (1.1.2017) by [The Environmental Permitting \(England and Wales\) Regulations 2016](#) (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), **2** (with regs. 1(3), 77-79, Sch. 4)

**C146** S. 161C: power to delegate functions conferred (1.4.1996) by 1995 c. 25, s. **114(2)(a)(v)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**C147** S. 161C applied (with modifications) (1.4.2006) by [Water Act 2003](#) (c. 37), **ss. 4(3)(b)**, 105(3); S.I. 2006/984, art. 2(d)

#### Marginal Citations

**M58** 1936 c. 49.

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#### <sup>F407</sup>161D Consequences of not complying with a works notice.

- (1) If a person on whom the [<sup>F408</sup>appropriate agency] 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 [<sup>F409</sup>a fine] 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, the [<sup>F408</sup>appropriate agency] may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by the [<sup>F408</sup>appropriate agency] in doing it.
- (4) If the [<sup>F408</sup>appropriate agency] 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, the [<sup>F408</sup>appropriate agency] may take proceedings in the High Court for the purpose of securing compliance with the notice.
- (5) In this section “works notice” means a works notice under section 161A above.

#### Textual Amendments

- F407** Ss. 161A-161D inserted (21.9.1995 for specified purposes, 16.3.1999 for other specified purposes and otherwise 29.4.1999) by 1995 c. 25, s. 120, **Sch. 22 para. 162** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 1999/803, **art. 2**; S.I. 1999/1301, **art. 2**
- F408** Words in ss. 161D-164 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), **art. 1(2)**, **Sch. 2 para. 283** (with Sch. 7)
- F409** Words in s. 161D(2)(a) substituted (12.3.2015) by The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 (S.I. 2015/664), **reg. 1(1)**, **Sch. 4 para. 24(5)** (with **reg. 5(1)**)

#### Modifications etc. (not altering text)

- C143** Ss. 161-161D modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), **reg. 1(b)**, **Sch. 1**)
- C144** Ss. 161-161D modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), **reg. 1(1)**, Sch. 23 Pt. 7 paras. 1(3), 2 (with **regs. 1(3)**, 77-79, Sch. 4)

#### 162 Other powers to deal with foul water and pollution.

- (1) Without prejudice to the powers conferred by [<sup>F410</sup>sections 161 to 161D] above and subsections (2) and (3) below, the [<sup>F408</sup>appropriate agency] shall have power, on any land—
  - (a) which belongs to the [<sup>F408</sup>appropriate agency]; or
  - (b) over or in which the [<sup>F408</sup>appropriate agency] has acquired the necessary easements or rights,
 to construct and maintain drains, sewers, watercourses, catchpits and other works for the purpose of intercepting, treating or disposing of any foul water arising or

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flowing on that land or of otherwise preventing any such pollution as is mentioned in section 159(6)(b) above.

(2) Subject to the following provisions of this Part, the [<sup>F408</sup>appropriate agency] shall, for the purpose of carrying out its functions, have power—

- (a) to carry out in a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and
- (b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) above, including for those purposes the following kinds of works, that is to say—
  - (i) breaking up or opening a street;
  - (ii) tunnelling or boring under a street;
  - (iii) breaking up or opening a sewer, drain or tunnel;
  - (iv) moving or removing earth and other materials;

and the provisions of section 159 above shall, so far as applicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.

(3) Subject to the following provisions of this Part, the [<sup>F408</sup>appropriate agency] shall, for the purpose of carrying out its functions, have power—

- (a) to carry out on any land which is not in, under or over a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and
- (b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) above;

and the provisions of section 160 above shall, so far as applicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.

(4) Without prejudice to the provisions of sections 178 to 184 below, nothing in subsection (1) above shall authorise the [<sup>F408</sup>appropriate agency], without the consent of the navigation authority in question, to intercept or take any water which a navigation authority are authorised to take or use for the purposes of their undertaking.

(5) Any dispute as to whether any consent for the purposes of subsection (4) above is being unreasonably withheld shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(6) In this section—

“relevant waterworks” means any waterworks which contain water which is or may be used by a water undertaker for providing a supply of water to any premises;

“service pipe” and “water main” have the same meanings as in the <sup>M59</sup>Water Industry Act 1991;

“waterworks” includes any water main, resource main, service pipe or discharge pipe and any spring, well, adit, borehole, service reservoir or tank.

#### Textual Amendments

**F408** Words in ss. 161D-164 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 283](#) (with Sch. 7)

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**F410** Words in s. 162(1) substituted (29.4.1999) by 1995 c. 25, s. 120, **Sch. 22 para. 163** (with ss. 7(6), 115, 117); S.I. 1999/1301, **art. 2**

#### Marginal Citations

**M59** 1991 c. 56.

### *Powers to discharge water*

#### **163 Discharges for works purposes.**

- (1) Subject to the following provisions of this section and to section 164 below, where the [<sup>F408</sup>appropriate agency]—
- (a) is carrying out, or is about to carry out, the construction, alteration, repair, cleaning, or examination of any reservoir, well, borehole or other work belonging to or used by the [<sup>F408</sup>appropriate agency] for the purposes of, or in connection with, the carrying out of any of its functions; or
  - (b) is exercising or about to exercise any power conferred by section 159, 160 or 162(2) or (3) above,
- the [<sup>F408</sup>appropriate agency] may cause the water in any relevant pipe or in any such reservoir, well, borehole or other work to be discharged into any available watercourse.
- (2) Nothing in this section shall authorise any discharge which—
- (a) damages or injuriously affects the works or property of any railway company or navigation authority; or
  - (b) floods or damages any highway.
- (3) If the [<sup>F408</sup>appropriate agency] fails to take all necessary steps to secure that any water discharged by it under this section is as free as may be reasonably practicable from—
- (a) mud and silt;
  - (b) solid, polluting, offensive or injurious substances; and
  - (c) any substances prejudicial to fish or spawn, or to spawning beds or food of fish,
- it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (4) In this section—
- “railway company” means the British Railways Board, [<sup>F411</sup>Transport for London or any subsidiary (within the meaning of the Greater London Authority Act 1999) of Transport for London,] or any other person authorised by any enactment, or by any order, rule or regulation made under any enactment, to construct, work or carry on a railway; and
- “relevant pipe” has the same meaning as in section 159 above.

#### Textual Amendments

**F408** Words in ss. 161D-164 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

**F411** Words in s. 163(4) substituted (15.7.2003) by [The Transport for London \(Consequential Provisions\) Order 2003 \(S.I. 2003/1615\)](#), art. 1(1), **Sch. 1 para. 16(2)**



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## 164 Consents for certain discharges under section 163.

- (1) Except in an emergency, no discharge through any pipe the diameter of which exceeds two hundred and twenty-nine millimetres shall be made under section 163 above except with such consent as may be prescribed.
- (2) Where the [<sup>F408</sup>appropriate agency] makes an application to any person for a consent for the purposes of this section—
  - (a) that application shall be accompanied or supplemented by all such information as that person may reasonably require; and
  - (b) the [<sup>F408</sup>appropriate agency] shall serve a copy of the application, and of any consent given on that application, on every person who—
    - (i) is registered with the [<sup>F408</sup>appropriate agency] in respect of any premises which are within three miles of the place where the discharge to which the application relates is proposed to be made and are not upstream from that place; and
    - (ii) has not agreed in writing that he need not be served with such a copy;but, subject to subsection (4) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.
- (3) Subject to subsection (4) below, an application for a consent for the purposes of this section shall be determined—
  - (a) in the case of an application with respect to a particular discharge, before the end of the period of seven days beginning with the day after the application is made; and
  - (b) in any other case, before the end of the period of three months beginning with that day;and, subject to that subsection, where an application for any consent is required to be determined within the period specified in paragraph (a) above and is not so determined, the consent applied for shall be deemed to have been given unconditionally.
- (4) Where—
  - (a) the [<sup>F408</sup>appropriate agency], having made an application to any person for a consent for the purposes of this section, has failed to comply with its obligation under subsection (2)(a) above to supplement that application with information required by that person; and
  - (b) that requirement was made by that person at such a time before the end of the period within which he is required to determine the application as gave the [<sup>F408</sup>appropriate agency] a reasonable opportunity to provide the required information within that period,that person may delay his determination of the application until a reasonable time after the required information is provided.
- (5) A consent for the purposes of this section may relate to a particular discharge or to discharges of a particular description and may be made subject to such reasonable conditions as may be specified by the person giving it; but a consent for those purposes shall not be unreasonably withheld.
- (6) Any dispute as to whether a consent for the purposes of this section should be given or withheld, or as to whether the conditions to which any such consent is made subject are reasonable, shall be referred to the arbitration of a single arbitrator appointed

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by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

- (7) Where any discharge under section 163 above is made in an emergency without the consent which, if there were no emergency, would be required by virtue of this section, the [F408 appropriate agency] shall, as soon as practicable after making the discharge, serve a notice which—
- (a) states that the discharge has been made; and
  - (b) gives such particulars of the discharge and of the emergency as the persons served with the notice might reasonably require,
- on every person on whom the [F408 appropriate agency] would have been required to serve the application for that consent or any copy of that application.
- (8) If the [F408 appropriate agency] contravenes, without reasonable excuse, any of the requirements of this section or any condition of a consent given for the purposes of this section, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (9) Nothing in this section shall require any consent to be obtained, or any notice to be served, in respect of any discharge if the requirements of section 34 of the M60 Water Act 1945 (temporary discharges into watercourses) in relation to that discharge had been satisfied before 1st September 1989.

#### Textual Amendments

**F408** Words in ss. 161D-164 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 283** (with Sch. 7)

#### Modifications etc. (not altering text)

**C148** S. 164 modified (30.11.2017) by [The Conservation of Habitats and Species Regulations 2017 \(S.I. 2017/1012\)](#), regs. 1(2), **102(4)**

#### Marginal Citations

**M60** 1945 c. 42.

### *Flood defence and drainage works*

#### 165 [F412 General powers to carry out works]

- [F413 (1) The [F414 appropriate agency] may—
- (a) carry out flood risk management work within subsection (1D)(a) to (f) if Conditions 1 and 2 are satisfied;
  - (b) carry out flood risk management work within subsection (1D)(g) or (h) if Condition 1 is satisfied.
- (1A) Condition 1 is that the [F415 appropriate agency] considers the work desirable having regard to the national flood and coastal erosion risk management strategies under sections 7 and 8 of the Flood and Water Management Act 2010.
- (1B) Condition 2 is that the purpose of the work is to manage a flood risk (within the meaning of that Act) from—
- (a) the sea, or

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- (b) a main river.
- (1C) In subsection (1B)(b) the reference to a main river includes a reference to a lake, pond or other area of water which flows into a main river.
- (1D) In this section “flood risk management work” means anything done—
- (a) to maintain existing works (including buildings or structures) including cleansing, repairing or otherwise maintaining the efficiency of an existing watercourse or drainage work;
  - (b) to operate existing works (such as sluiceways or pumps);
  - (c) to improve existing works (including buildings or structures) including anything done to deepen, widen, straighten or otherwise improve an existing watercourse, to remove or alter mill dams, weirs or other obstructions to watercourses, or to raise, widen or otherwise improve a drainage work;
  - (d) to construct or repair new works (including buildings, structures, watercourses, drainage works and machinery);
  - (e) for the purpose of maintaining or restoring natural processes;
  - (f) to monitor, investigate or survey a location or a natural process;
  - (g) to reduce or increase the level of water in a place;
  - (h) to alter or remove works.]
- (2) The [<sup>F416</sup>appropriate agency] shall also have power<sup>F417</sup>... to maintain, improve or construct drainage works for the purpose of defence against sea water or tidal water; and that power shall be exercisable both above and below the low-water mark.
- (3) The [<sup>F418</sup>appropriate agency] may construct all such works and do all such things in the sea or in any estuary as may, in its opinion, be necessary to secure an adequate outfall for a main river.
- [<sup>F419</sup>(4) The Agency [<sup>F420</sup>or the NRBW] may by agreement with any person carry out, improve or maintain, at that person’s expense, any drainage works which that person is entitled to carry out, improve or maintain; but for the purposes of this subsection the expense to be borne by that person shall not include such part (if any) of the amount of any grant made under section 47 of the Environment Act 1995 (grants to the new Agencies) [<sup>F421</sup>or article 12 of the Natural Resources Body for Wales (Establishment) Order 2012 (grants to the NRBW) (S.I.2012/1903)] as the Agency [<sup>F420</sup>or the NRBW] decides (subject to any terms on which the grant is made) to allocate for the works in question.]
- (5) The Agency [<sup>F422</sup>or the NRBW] may enter into an agreement with any local authority or with any navigation authority for the carrying out by that authority, on such terms as to payment or otherwise as may be specified in the agreement, of any work <sup>F423</sup>... which the Agency [<sup>F422</sup>or the NRBW] is authorised to carry out [<sup>F424</sup>under this section].
- (6) Nothing in subsections (1) to (3) above authorises any person to enter on the land of any person except for the purpose of maintaining existing works.
- (7) In this section “watercourse” has the same meaning as in Part IV of this Act <sup>F425</sup>...

#### Textual Amendments

**F412** S. 165 heading substituted (19.7.2011 for E., 1.10.2011 for W.) by [Flood and Water Management Act 2010 \(c. 29\), s. 49\(3\), Sch. 2 para. 47\(6\)](#) (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)

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- F413** S. 165(1)-(1D) substituted for s. 165(1) (19.7.2011 for E., 1.10.2011 for W.) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(2)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)
- F414** Words in s. 165(1) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(2)** (with Sch. 7)
- F415** Words in s. 165(1A) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(2)** (with Sch. 7)
- F416** Words in s. 165(2) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(2)** (with Sch. 7)
- F417** Words in s. 165(2) omitted (19.7.2011 for E., 1.10.2011 for W.) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(3)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)
- F418** Words in s. 165(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(2)** (with Sch. 7)
- F419** S. 165(4) substituted (17.3.2004 for E., 1.4.2004 for W.) by Water Act 2003 (c. 37), **ss. 69(2)**, 105(3); S.I. 2004/641, art. 2(a) (with Sch. 3 para. 7); S.I. 2004/910, art. 2(1)(b)
- F420** Words in s. 165(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(3)(a)** (with Sch. 7)
- F421** Words in s. 165(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(3)(b)** (with Sch. 7)
- F422** Words in s. 165(5) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 284(4)** (with Sch. 7)
- F423** Words in s. 165(5) omitted (19.7.2011 for E., 1.10.2011 for W.) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(4)(a)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)
- F424** Words in s. 165(5) added (19.7.2011 for E., 1.10.2011 for W.) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(4)(b)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)
- F425** Words in s. 165(7) omitted (19.7.2011 for E., 1.10.2011 for W.) by virtue of Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 47(5)** (with s. 49(1)(6)); S.I. 2011/1770, art. 3(f); S.I. 2011/2204, art. 3(2)(d)

**Modifications etc. (not altering text)**

- C149** S. 165 excluded (01.12.1991) by Land Drainage Act 1991 (c. 59, SIF 73:1), **ss. 11(2)**, 76(2).

**166 Power to carry out works for purpose of providing flood warning system.**

- (1) Without prejudice to its other powers by virtue of section 37 of the 1995 Act (incidental general powers of the Agency), [<sup>F426</sup>or (as the case may be) article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (general incidental function of the Body) (S.I.2012/1903),] Part IV of this Act and this Part, the [<sup>F427</sup>appropriate agency] shall have power—
- (a) to provide and operate flood warning systems;
  - (b) to provide, install and maintain apparatus required for the purposes of such systems;
  - (c) to carry out any other engineering or building operations so required.
- (2) Subsection (1) above shall not be construed as authorising, on the part of the [<sup>F428</sup>appropriate agency], any act or omission which, apart from that subsection, would be actionable at the suit of any person on any grounds other than a limitation imposed by law on the capacity of the [<sup>F428</sup>appropriate agency] by virtue of its constitution.

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(3) The [<sup>F429</sup>Agency] may exercise the powers conferred by subsection (1)(b) or (c) above in an area in Scotland as if—

- (a) its functions in relation to [<sup>F430</sup>the flood risk management regions adjacent to Scotland] were functions in relation to that area in Scotland; and
- (b) that area in Scotland were included in [<sup>F431</sup>those flood risk management regions];

but the powers conferred by this subsection are subject (except in the case of a power to maintain apparatus) to prior consultation with the local authority (within the meaning of section 1 of the <sup>M61</sup>Flood Prevention (Scotland) Act 1961) for the area in Scotland in question.

[<sup>F432</sup>(4) In this section—

[<sup>F433</sup>“flood risk management region” means the region of a Regional Flood and Coastal Committee, within the meaning of section 22 of the Flood and Water Management Act 2010;]

“flood warning system” means any system whereby, for the purpose of providing warning of any danger of flooding, information with respect to—

- (a) rainfall, as measured at a particular place within a particular period; or
- (b) the level or flow of any inland water, or part of an inland water, at a particular time; or
- (c) other matters appearing to the [<sup>F434</sup>appropriate agency] to be relevant for that purpose,

is obtained and transmitted, whether automatically or otherwise, with or without provision for carrying out calculations based on such information and for transmitting the results of those calculations;

“inland water” means any of the following in any part of Great Britain, that is to say—

- (a) any river, stream or other watercourse, whether natural or artificial and whether tidal or not;
- (b) any lake or pond, whether natural or artificial, and any reservoir or dock; and
- (c) any channel, creek, bay, estuary or arm of the sea;

“rainfall” includes any fall of snow, hail or sleet.]

[<sup>F432</sup>(4) In this section—

“flood warning system” means any system whereby, for the purpose of providing warning of any danger of flooding, information with respect to—

- (a) rainfall, as measured at a particular place within a particular period; or
- (b) the level or flow of any inland water, or part of an inland water, at a particular time; or
- (c) other matters appearing to the [<sup>F434</sup>appropriate agency] to be relevant for that purpose,

is obtained and transmitted, whether automatically or otherwise, with or without provision for carrying out calculations based on such information and for transmitting the results of those calculations;

“inland water” means any of the following in any part of Great Britain, that is to say—

- (a) any river, stream or other watercourse, whether natural or artificial and whether tidal or not;

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- (b) any lake or pond, whether natural or artificial, and any reservoir or dock; and
- (c) any channel, creek, bay, estuary or arm of the sea;

“rainfall” includes any fall of snow, hail or sleet.]]

#### Textual Amendments

- F426** Words in s. 166(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 285(2)(a)** (with Sch. 7)
- F427** Words in s. 166(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 285(2)(b)** (with Sch. 7)
- F428** Words in s. 166(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 285(3)** (with Sch. 7)
- F429** Words in s. 166 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F430** Words in s. 166(3)(a) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 12(2)(a)**
- F431** Words in s. 166(3)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 12(2)(b)**
- F432** S. 166(4) substituted (17.3.2004 for E., 1.4.2004 for W.) by [Water Act 2003 \(c. 37\)](#), **ss. 69(3)**, 105(3); S.I. 2004/641, art. 2(a) (with Sch. 3 para. 7); S.I. 2004/910, art. 2(1)(b)
- F433** Words in s. 166(4) inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 12(3)**
- F434** Words in s. 166(4) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 285(4)** (with Sch. 7)

#### Marginal Citations

- M61** 1961 c. 41.

### 167 Power to dispose of spoil in connection with flood defence works.

- (1) Subject to subsection (2) below, the [<sup>F435</sup>appropriate agency] may—
- (a) without making payment for it, appropriate and dispose of any matter removed in the course of the carrying out of any work for widening, deepening or dredging any watercourse; and
  - (b) deposit any matter so removed on the banks of the watercourse, or on such width of land adjoining the watercourse as is sufficient to enable the matter in question to be removed and deposited by mechanical means in one operation.
- (2) Subsection (1) above shall not authorise the deposit of any matter if the matter deposited would constitute a statutory nuisance within the meaning of Part III of the <sup>M62</sup>Environmental Protection Act 1990.
- (3) The [<sup>F436</sup>appropriate agency] and the council of any district or London borough [<sup>F437</sup>or Welsh county or county borough] may enter into an agreement providing—
- (a) for the disposal by the council of any matter removed as mentioned in subsection (1) above; and
  - (b) for the payment by the [<sup>F436</sup>appropriate agency] to the council, in respect of the disposal of the matter by the council, of such sum as may be provided by the agreement.
- (4) In this section “banks” and “watercourse” have the same meanings as in Part IV of this Act.

*Status: Point in time view as at 17/09/2018.*

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#### Textual Amendments

- F435** Words in s. 167(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 286(2)** (with Sch. 7)
- F436** Words in s. 167(3) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 286(3)** (with Sch. 7)
- F437** Words in s. 167(3) inserted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 para. 3(4)** (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

#### Marginal Citations

- M62** 1990 c. 43.

### [<sup>F438</sup>167A Consultation in relation to works affecting flood and coastal erosion risks

- (1) Before exercising a function to which this section applies in a manner which may affect a flood or coastal erosion risk (within the meaning of the Flood and Water Management Act 2010) in Wales, the Agency must consult the NRBW.
- (2) Before exercising a function to which this section applies in a manner which may affect a flood or coastal erosion risk (within that meaning) in England, the NRBW must consult the Agency.
- (3) This section applies to any function under—
  - <sup>F439</sup>(a) . . . . .
  - (b) the flood risk management work provisions;
  - (c) byelaws made under paragraph 5 of Schedule 25.]

#### Textual Amendments

- F438** S. 167A inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 287** (with Sch. 7)
- F439** S. 167A(3)(a) repealed (6.4.2016) by [The Environmental Permitting \(England and Wales\) \(Amendment\) \(No. 2\) Regulations 2016 \(S.I. 2016/475\)](#), regs. 1(2), **30** (with regs. 31-33)

### *Compulsory works orders*

## 168 Compulsory works orders.

- (1) Where the [<sup>F440</sup>appropriate agency] is proposing, for the purposes of, or in connection with, the carrying out of any of its functions—
  - (a) to carry out any engineering or building operations; or
  - (b) to discharge water into any inland waters or underground strata,the [<sup>F440</sup>appropriate agency] may apply to either of the Ministers for an order under this section (“a compulsory works order”).
- (2) Subject to the following provisions of this section, the Ministers shall each have power, on an application under subsection (1) above, by order made by statutory instrument—
  - (a) to confer such compulsory powers; and
  - (b) to grant such authority,

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as he considers necessary or expedient for the purpose of enabling any engineering or building operations or discharges of water to be carried out or made for the purposes of, or in connection with, the carrying out of the functions with respect to which the application was made.

- (3) Schedule 19 to this Act shall have effect with respect to applications for compulsory works orders and with respect to such orders.
- (4) Subject to the provisions of Schedule 19 to this Act, a compulsory works order may—
- (a) without prejudice to section 154 above, confer power to acquire compulsorily any land, including—
    - (i) power to acquire interests in and rights over land by the creation of new rights and interests; and
    - (ii) power, by the compulsory acquisition by the [F440 appropriate agency] of any rights over land which is to be or has been acquired by the [F440 appropriate agency], to extinguish any such rights;
  - (b) apply for the purposes of the order, either with or without modifications, any of the relevant provisions of this Part which do not apply for those purposes apart from by virtue of this paragraph;
  - (c) make any authority granted by the order subject to such conditions as may be specified in the order;
  - (d) amend or repeal any local statutory provision;
  - (e) contain such supplemental, consequential and transitional provision as the Minister making the order considers appropriate;

and section 156(1) above shall apply in relation to the powers conferred by virtue of this section as it applies in relation to the power conferred by section 154 above.

- (5) Without prejudice to any duty imposed by virtue of section 184 below, where—
- (a) either of the Ministers makes a compulsory works order authorising the [F440 appropriate agency] to carry out works for or in connection with the construction or operation of a reservoir or conferring compulsory powers for that purpose on the [F440 appropriate agency]; and
  - (b) it appears to him that the works to be carried out may permanently affect the area in which they are situated and are not primarily intended to benefit the inhabitants of that area,

he may include in the order provision with respect to facilities for recreation or other leisure-time occupation for the benefit of those inhabitants.

- (6) Nothing in any compulsory works order shall exempt the [F440 appropriate agency] from any restriction imposed by Chapter II of Part II of this Act.
- (7) It is hereby declared that a compulsory works order may grant authority for discharges of water by the [F440 appropriate agency] where the [F440 appropriate agency] has no power to take water, or to require discharges to be made, from the inland waters or other source from which the discharges authorised by the order are intended to be made; but nothing in so much of any such order as grants authority for any discharges of water shall have the effect of conferring any such power.
- (8) In this section the reference to the relevant provisions of this Part is a reference to the provisions of this Part except sections 155 to 158 and 165 to 167 above.

[F441(9) In this section, in relation to the NRBW, references to functions have effect as references to relevant transferred functions.]



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### Textual Amendments

**F440** Words in s. 168 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 288(2)** (with Sch. 7)

**F441** S. 168(9) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 288(3)** (with Sch. 7)

## CHAPTER II

### POWERS OF ENTRY

#### 169 Powers of entry for enforcement purposes.

- (1) Any person designated in writing for the purpose by either of the Ministers<sup>[F442]</sup>, by the Agency, or by the NRBW,] may—
- (a) enter any premises or vessel for the purpose of ascertaining whether any provision of an enactment to which this section applies, of any subordinate legislation or other instrument made by virtue of any such enactment or of any byelaws made by the Agency<sup>[F443]</sup> or of any relevant byelaws made by the NRBW] is being or has been contravened; and
  - (b) carry out such inspections, measurements and tests on any premises or vessel entered by that person or of any articles found on any such premises or vessel, and take away such samples of water or effluent or of any land or articles, as that Minister<sup>[F444]</sup>, the Agency, or the NRBW]—
    - (i) considers appropriate for the purpose mentioned in paragraph (a) above; and
    - (ii) has authorised that person to carry out or take away.

<sup>[F445]</sup>(2) The powers conferred by subsection (1) above in relation to any premises shall include power, in order to obtain information for the purpose mentioned in subsection (1)(a) above—

- (a) to carry out experimental borings or other works on those premises; and
- (b) to install and keep monitoring and other apparatus there.]

(3) <sup>[F446]</sup>Subject to subsection (4) below,]this section applies to any enactment contained in this Act and to any other enactment under or for the purposes of which the <sup>[F447]</sup>Agency] carries out functions <sup>[F448]</sup>or the NRBW carries out relevant transferred functions].

<sup>[F449]</sup>(3A) The Agency may designate a person under subsection (1) in relation to—

- (a) any provision made by or under this Act, so far as it applies otherwise than in relation to Wales;
- (b) any provision made by or under any other enactment, if the Agency carries out functions under or for the purposes of that provision;
- (c) any byelaws made by the Agency.

(3B) The NRBW may designate a person under subsection (1) in relation to—

- (a) any provision made by or under this Act, so far as it applies in relation to Wales;
- (b) any provision made by or under any other enactment, if the NRBW carries out relevant transferred functions under or for the purposes of that provision;

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(c) any relevant byelaws.]

<sup>F450</sup>[(4) The powers conferred by this section shall not have effect for the purposes of any of the Agency's [<sup>F451</sup>or the NRBW's] pollution control functions, within the meaning of section 108 of the 1995 Act.]

[<sup>F452</sup>(5) In this section, “relevant byelaws” means byelaws made (or treated as if made) by the NRBW in the exercise of any relevant transferred functions.]

#### Textual Amendments

- F442** Words in s. 169(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 289(2)(a)** (with Sch. 7)
- F443** Words in s. 169(1)(a) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 289(2)(b)** (with Sch. 7)
- F444** Words in s. 169(1)(b) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 289(2)(c)** (with Sch. 7)
- F445** S. 169(2) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 71**, 105(3); S.I. 2004/641, art. 3(r) (with Sch. 3 paras. 67)
- F446** Words in s. 169(3) inserted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 165** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F447** Words in s. 169 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F448** Words in s. 169(3) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 289(3)** (with Sch. 7)
- F449** S. 169(3A)(3B) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 289(4)** (with Sch. 7)
- F450** S. 169(4) added (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 165** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F451** Words in s. 169(4) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 289(5)** (with Sch. 7)
- F452** S. 169(5) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 289(6)** (with Sch. 7)

## 170 Power of entry for certain works purposes.

- (1) Any person designated in writing for the purpose by the Agency [<sup>F453</sup>or by the NRBW] may enter any premises for any of the purposes specified in subsection (2) below.
- (2) The purposes mentioned in subsection (1) above are—
  - (a) the carrying out of any survey or tests for the purpose of determining—
    - (i) whether it is appropriate and practicable for the Agency [<sup>F454</sup>or the NRBW] to exercise any relevant works power; or
    - (ii) how any such power should be exercised;
  - (b) the exercise of any such power.
- (3) The power by virtue of subsection (1) above of a person designated by the Agency [<sup>F455</sup>or by the NRBW] to enter any premises for the purposes of carrying out any survey or tests shall include power—
  - (a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil; and

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- (b) to take away and analyse such samples of water or effluent or of any land or articles as the Agency [<sup>F456</sup>or the NRBW] considers necessary for the purpose of determining either of the matters mentioned in subsection (2)(a) above and has authorised that person to take away and analyse.
- (4) In this section “relevant works power” means any power conferred by any of the provisions of sections 159, 160, 162(2) and (3) and 163 above.

#### Textual Amendments

- F453** Words in s. 170(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 290(2)** (with Sch. 7)
- F454** Words in s. 170(2)(a)(i) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 290(3)** (with Sch. 7)
- F455** Words in s. 170(3) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 290(4)(a)** (with Sch. 7)
- F456** Words in s. 170(3) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 290(4)(b)** (with Sch. 7)

#### Modifications etc. (not altering text)

- C150** S. 170 applied (with modifications) (W.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (Wales) Order 2011 (S.I. 2011/2829), arts. 1, **5(1)**
- C151** S. 170 applied (with modifications) (E.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (England) Order 2011 (S.I. 2011/2855), arts. 1(c), **6(1)**
- C152** S. 170 applied (with modifications) (E.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (England) Order 2011 (S.I. 2011/2855), arts. 1(c), **5(1)**
- C153** S. 170 applied (with modifications) (W.) (1.12.2011) by The Incidental Flooding and Coastal Erosion (Wales) Order 2011 (S.I. 2011/2829), arts. 1, **6(1)**

### 171 Power to carry out surveys and to search for water.

- (1) Without prejudice to the rights and powers conferred by the other provisions of this Chapter, any person designated in writing under this section by the Agency [<sup>F457</sup>or by the NRBW] may enter any premises for any of the purposes specified in subsection (2) below.
- (2) The purposes mentioned in subsection (1) above are the carrying out of any survey or tests for the purpose of determining—
  - <sup>F458</sup>(a) .....
  - (b) whether it would be appropriate for the Agency [<sup>F459</sup>or the NRBW] to apply for an order under section 168 above and what compulsory powers it would be appropriate to apply for under that section.
- (3) The power by virtue of subsection (1) above of a person designated under this section to enter any premises for the purpose of carrying out any survey or tests shall include power—
  - (a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil, the presence of underground water in the sub-soil or the quantity or quality of any such water;
  - (b) to install and keep monitoring or other apparatus on the premises for the purpose of obtaining the information on which any such determination as is mentioned in subsection (2) above may be made; and

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- (c) to take away and analyse such samples of water or of any land or articles as the Agency [<sup>F460</sup>or the NRBW] considers necessary for any of the purposes so mentioned and has authorised that person to take away and analyse.
- (4) [<sup>F461</sup>The powers conferred by this section or section 172 of the Housing and Planning Act 2016 shall not be exercised on behalf of the Agency or the NRBW in any case for purposes connected with the determination of—]
- (a) whether, where or how a reservoir should be constructed; or
- (b) whether, where or how a borehole should be sunk for the purpose of abstracting water from or discharging water into any underground strata,
- unless the Secretary of State has, in accordance with subsection (5) below, given his written authorisation in relation to that case for the exercise of those powers for those purposes.
- (5) The Secretary of State shall not give his authorisation for the purposes of subsection (4) above unless—
- (a) he is satisfied that notice of the proposal to apply for the authorisation has been given to the owner and to the occupier of the premises in question; and
- (b) he has considered any representation or objections with respect to the proposed exercise of the powers under this section which—
- (i) have been duly made to him by the owner or occupier of those premises, within the period of fourteen days beginning with the day after the giving of the notice; and
- (ii) have not been withdrawn.
- [<sup>F462</sup>(6) In relation to the NRBW, the reference to functions in subsection (2)(a) has effect as a reference to relevant transferred functions.]

#### Textual Amendments

- F457** Words in s. 171(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 291(2)** (with Sch. 7)
- F458** S. 171(2)(a) omitted (13.7.2016) by virtue of [Housing and Planning Act 2016 \(c. 22\)](#), s. 216(3), **Sch. 14 para. 23(2)**; [S.I. 2016/733](#), reg. 3(h) (with reg. 6)
- F459** Words in s. 171(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 291(3)** (with Sch. 7)
- F460** Words in s. 171(3)(c) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 291(4)** (with Sch. 7)
- F461** Words in s. 171(4) substituted (13.7.2016) by [Housing and Planning Act 2016 \(c. 22\)](#), s. 216(3), **Sch. 14 para. 23(3)**; [S.I. 2016/733](#), reg. 3(h) (with reg. 6)
- F462** S. 171(6) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 291(5)** (with Sch. 7)

#### Modifications etc. (not altering text)

- C154** S. 171 applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, **5(2)**
- C155** S. 171 applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), **5(2)**
- C156** S. 171 applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, **6(2)**

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**C157** S. 171 applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), **6(2)**

## 172 Powers of entry for other purposes.

- (1) Any person designated in writing for the purpose by either of the Ministers<sup>[F463]</sup>, by the Agency, or by the NRBW] may enter any premises or vessel for the purpose of—
- determining whether, and if so in what manner, any power or duty conferred or imposed on either of the Ministers<sup>[F464]</sup>, on the Agency, or on the NRBW,] by virtue of any enactment to which this section applies (including a power of either or both of the Ministers to make subordinate legislation) should be exercised or, as the case may be, performed; or
  - exercising or performing any power or duty which is so conferred or imposed.
- (2) Any person designated in writing for the purpose by either of the Ministers<sup>[F465]</sup>, the Agency, or the NRBW,] may—
- carry out such inspections, measurements and tests on any premises or vessel entered by that person under this section or of any articles found on any such premises or vessel; and
  - take away such samples of water or effluent or of any land or articles, as that Minister <sup>[F465]</sup>, the Agency, or the NRBW,] considers appropriate for any purpose mentioned in subsection (1) above and has authorised that person to carry out or take away.
- (3) <sup>[F466]</sup>Subject to subsection (3A) below,]the powers which by virtue of subsections (1) and (2) above are conferred in relation to any premises for the purpose of enabling either of the Ministers<sup>[F467]</sup>, the Agency, or the NRBW,] to determine whether or in what manner to exercise or perform any power or duty conferred or imposed on him or it by or under the water pollution provisions of this Act shall include power, in order to obtain the information on which that determination may be made—
- to carry out experimental borings or other works on those premises; and
  - to install and keep monitoring and other apparatus there.
- <sup>[F468]</sup>(3A) The powers conferred by this section shall not have effect for the purposes of any of the Agency's <sup>[F469]</sup>or the NRBW's] pollution control functions, within the meaning of section 108 of the 1995 Act.]
- (4) This section applies to any enactment contained in this Act and to any other enactment under or for the purposes of which the Agency <sup>[F470]</sup>or the NRBW] carries out functions.
- <sup>[F471]</sup>(5) In relation to the NRBW, the reference to functions in subsection (4) has effect as a reference to relevant transferred functions.]

### Textual Amendments

- F463** Words in s. 172(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 292(2)(a)** (with Sch. 7)
- F464** Words in s. 172(1)(a) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 292(2)(b)** (with Sch. 7)
- F465** Words in s. 172(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 292(3)** (with Sch. 7)

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- F466** Words in s. 172(3) inserted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 166** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F467** Words in s. 172(3) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 292(3)** (with Sch. 7)
- F468** S. 172(3A) added (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 166** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F469** Words in s. 172(3A) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 292(4)** (with Sch. 7)
- F470** Words in s. 172(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 292(5)** (with Sch. 7)
- F471** S. 172(5) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 292(6)** (with Sch. 7)

### 173 Powers of entry: supplemental provisions.

Schedule 20 to this Act shall have effect with respect to the powers of entry and related powers which are conferred by the preceding provisions of this Chapter.

#### Modifications etc. (not altering text)

- C158** S. 173 applied (with modifications) (2.7.2009) by Broads Authority Act 2009 (c. i), s. **24(3)** (with ss. 2(3), 16(3), 41(4), 42, Sch. 6)
- C159** S. 173 applied (with modifications) (2.7.2009) by Broads Authority Act 2009 (c. i), s. **17(3)** (with ss. 2(3), 16(3), 42, Sch. 6)

### 174 Impersonation of persons exercising powers of entry.

- (1) A person who, without having been designated or authorised for the purpose by the Agency [<sup>F472</sup>or by the NRBW], purports to be entitled to enter any premises or vessel in exercise of a power exercisable in pursuance of any such designation or authorisation shall be guilty of an offence and [<sup>F473</sup>liable—].
- [<sup>F473</sup>(a) on summary conviction, to a fine not exceeding the statutory maximum;  
(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.]
- (2) For the purposes of this section it shall be immaterial, where a person purports to be entitled to enter any premises or vessel, that the power which that person purports to be entitled to exercise does not exist, or would not be exercisable, even if that person had been designated or authorised by the Agency [<sup>F474</sup>or by the NRBW].

#### Textual Amendments

- F472** Words in s. 174(1) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 293** (with Sch. 7)
- F473** S. 174(1)(a)(b) and the word preceding them substituted (1.4.1996) for words by 1995 c. 25, s. 120, **Sch. 22 para. 167** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F474** Words in s. 174(2) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 293** (with Sch. 7)

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### CHAPTER III

#### PROVISIONS SUPPLEMENTAL TO LAND AND WORK POWERS

##### *Vesting of pipes in the [F475 appropriate agency]*

###### Textual Amendments

**F475** Words in s. 175 cross-heading substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 294 (with Sch. 7)

#### **175 Vesting of pipes in the [F476 appropriate agency].**

- (1) Subject to any provision to the contrary contained in an agreement between the [F476 appropriate agency] and the person in whom an interest in the pipe is or is to be vested, every pipe which—
  - (a) is a relevant pipe for the purposes of section 159 or 160 above; and
  - (b) has been laid, in exercise of any power conferred by Chapter I of this Part or otherwise, by the [F476 appropriate agency],shall vest in the [F476 appropriate agency].
- (2) Subsection (1) above is without prejudice to the vesting of anything in the [F476 appropriate agency] by virtue of the exercise by the [F476 appropriate agency] of any power to acquire property by agreement or compulsorily.

###### Textual Amendments

**F476** Words in s. 175 and heading substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 294 (with Sch. 7)

##### *Offence of interference with works etc.*

#### **176 Offence of interference with works etc.**

- (1) Subject to subsection (2) below, if any person without the consent of the [F477 appropriate agency]—
  - (a) intentionally or recklessly interferes with any resource main or other pipe vested in the [F477 appropriate agency] or with any structure, installation or apparatus belonging to the [F477 appropriate agency]; or
  - (b) by any act or omission negligently interferes with any such main or other pipe or with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (2) A person shall not be guilty of an offence under subsection (1) above—
  - (a) by reason of anything done in an emergency to prevent loss or damage to persons or property; or

*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) by reason of his opening or closing the stopcock fitted to a service pipe by means of which water is supplied to any premises by a water undertaker if—
- (i) he has obtained the consent of every consumer whose supply is affected by the opening or closing of that stopcock or, as the case may be, of every other consumer whose supply is so affected; and
  - (ii) in the case of opening a stopcock, the stopcock was closed otherwise than by the undertaker.
- (3) Any person who without the consent of the [F477 appropriate agency]—
- (a) attaches any pipe or apparatus to any resource main or other pipe vested in the [F477 appropriate agency]; or
  - (b) subject to subsection (4) below, uses any pipe or apparatus which has been attached or altered in contravention of this section,
- shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (4) In proceedings against any person for an offence by virtue of paragraph (b) of subsection (3) above it shall be a defence for that person to show that he did not know, and had no grounds for suspecting, that the pipe or apparatus in question had been attached or altered as mentioned in that subsection.
- (5) An offence under subsection (1) or (3) above shall constitute a breach of a duty owed to the [F477 appropriate agency]; and any such breach of duty which causes the [F477 appropriate agency] to sustain loss or damage shall be actionable at the suit of the [F477 appropriate agency].
- (6) The amount recoverable by virtue of subsection (5) above from a person who has committed an offence under subsection (3) above shall include such amount as may be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.
- (7) In this section “service pipe” and “stopcock” have the same meanings as in the <sup>M63</sup>Water Industry Act 1991, and “consumer” has the same meaning as in Part III of that Act.

#### **Textual Amendments**

**F477** Words in ss. 176-179 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

#### **Marginal Citations**

**M63** 1991 c. 56.

### *Compensation etc. in respect of exercise of works powers*

#### **177 Compensation etc. in respect of exercise of works powers.**

Schedule 21 to this Act shall have effect for making provision for imposing obligations as to the payment of compensation in respect of the exercise of the powers conferred on the [F477 appropriate agency] by sections 159 to 167 above and otherwise for minimising the damage caused by the exercise of those powers.



*Status: Point in time view as at 17/09/2018.*

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#### Textual Amendments

**F477** Words in ss. 176-179 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

#### *Protective provisions*

### **178 Protection for particular undertakings.**

Schedule 22 to this Act shall have effect for the protection of particular undertakings in connection with the carrying out of works and other activities by the [<sup>F477</sup>appropriate agency].

#### Textual Amendments

**F477** Words in ss. 176-179 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

### **179 Protective provisions in respect of flood defence works and watercourses etc.**

- (1) Nothing in this Act shall confer power on any person to do anything, except with the consent of the person who so uses them, which interferes—
  - (a) with any sluices, floodgates, groynes, sea defences or other works used by any person for draining, preserving or improving any land under any local statutory provision; or
  - (b) with any such works used by any person for irrigating any land.
- (2) Where the [<sup>F477</sup>appropriate agency] proposes, otherwise than in exercise of any compulsory powers—
  - (a) to construct or alter any such inland waters in any internal drainage district as do not form part of a main river; or
  - (b) to construct or alter any works on or in any such inland waters,the [<sup>F477</sup>appropriate agency] shall consult the internal drainage board for that district before doing so.
- (3) A consent for the purposes of subsection (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (4) Any dispute—
  - (a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in subsection (1) above;
  - (b) as to whether any consent for the purposes of this section is being unreasonably withheld; or
  - (c) as to whether any condition subject to which any such consent has been given was reasonable,

shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.

*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (5) The provisions of this section shall be without prejudice to the provisions of Schedule 22 to this Act.

**Textual Amendments**

**F477** Words in ss. 176-179 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

**Modifications etc. (not altering text)**

**C160** S. 179 applied (01.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), **ss. 67(2)**, 76(2).

**180 Power of navigation authorities etc to divert the [<sup>F478</sup>appropriate agency's] watercourses.**

- (1) Where any watercourses under the control of the [<sup>F478</sup>appropriate agency] pass under or interfere with, or with the improvement or alteration of, any river, canal, dock, harbour, basin or other work (including any towing-path adjacent thereto) which belongs to or is under the jurisdiction of any relevant authority, the relevant authority may, at their own expense and on substituting for those watercourses other equally effective watercourses—
- (a) take up, divert or alter the level of those watercourses; and
  - (b) do all such matters and things as may be necessary in connection with the works authorised to be done by them under this section.
- (2) If any question arises under this section between the [<sup>F478</sup>appropriate agency] and any relevant authority as to whether any watercourses substituted or proposed to be substituted by the relevant authority for any existing watercourses are as effective as the existing watercourses, that question shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers on the application of either party.
- (3) In this section—
- “relevant authority” means any navigation authority, harbour authority or conservancy authority; and
- “watercourse” has the same meaning as in Part IV of this Act.

**Textual Amendments**

**F478** Words in s. 180 and heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

**181 Works in tidal lands etc.**

- (1) Nothing in any of the provisions of this Part relating to any relevant works power shall authorise the [<sup>F479</sup>appropriate agency] to carry out any works at any place below the place to which the tide flows at mean high water springs, except in accordance with such plans and sections, and subject to such restrictions, as may, before the works are commenced, have been approved by the Secretary of State.

*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) An approval for the purposes of subsection (1) above shall be given to the [<sup>F479</sup>appropriate agency] by the service on the [<sup>F479</sup>appropriate agency] of a notice containing the approval.
- (3) Section 38 of the <sup>M64</sup>Salmon and Freshwater Fisheries Act 1975 (tidal lands etc.) shall apply to any proposed construction, alteration or extension under section 156 above as it applies to any proposed construction, alteration or extension under that Act.
- (4) Section 74 of the <sup>M65</sup>Land Drainage Act 1991 (application to Crown and tidal lands), so far as it relates to lands below the high-water mark of ordinary spring tides shall apply, as it applies in relation to that Act, to the flood defence provisions of this Act.
- (5) In subsection (1) above the reference to a relevant works power is a reference to a power conferred by any of sections 159, 160, 162(2) and (3) and 163 above.

#### Textual Amendments

**F479** Words in ss. 181-183 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

#### Marginal Citations

**M64** 1975 c. 51.

**M65** 1991 c. 59.

## 182 Mineral rights.

Schedule 23 to this Act (which makes provision with respect to the acquisition of mineral rights by the [<sup>F480</sup>appropriate agency] and with respect to the working of mines and minerals where pipes, sewers or other related works are affected) shall have effect and, in the case of the compulsory acquisition of land by virtue of this Act, shall have effect instead of Schedule 2 to the <sup>M66</sup>Acquisition of Land Act 1981 (mineral rights etc. in relation to compulsory purchase orders).

#### Textual Amendments

**F480** Words in ss. 181-183 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

#### Marginal Citations

**M66** 1981 c. 67.

## 183 Saving for planning controls etc.

- (1) Without prejudice to the operation of section 90 of the <sup>M67</sup>Town and Country Planning Act 1990 (planning permission deemed to be granted in certain cases) in relation to any provision made by or under this Act or any other enactment which by virtue of this Act or the <sup>M68</sup>Water Act 1989 relates to the functions of the [<sup>F481</sup>appropriate agency], nothing in this Act or in any such enactment shall be construed as authorising the carrying out of any development (within the meaning of that Act of 1990) without the grant of such planning permission as may be required by that Act of 1990.

*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) Nothing in the flood defence provisions of this Act shall authorise any person to carry out any works or do anything in contravention of any of the provisions of the <sup>M69</sup>Ancient Monuments and Archaeological Areas Act 1979.

#### Textual Amendments

**F481** Words in ss. 181-183 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 294** (with Sch. 7)

#### Modifications etc. (not altering text)

**C161** S. 183 applied (01.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), **ss. 67(2)**, 76(2).

#### Marginal Citations

**M67** 1990 c. 8.

**M68** 1989 c. 15.

**M69** 1979 c. 46.

### 184 Duties to make recreational facilities available when building reservoirs in Wales.

- (1) Where [<sup>F482</sup>the NRBW] carries out any works for or in connection with the construction or operation of a reservoir in Wales which—
- (a) permanently affect one or more communities; and
  - (b) are not primarily intended by [<sup>F482</sup>the NRBW] to benefit the inhabitants of that or those communities,
- it shall be the duty of [<sup>F482</sup>the NRBW] to make available facilities for recreation or other leisure-time occupation for the benefit of those inhabitants or to assist others to make such facilities available.
- (2) It shall be the duty of [<sup>F482</sup>the NRBW], in performing its duty under subsection (1) above, to consult—
- (a) the community councils of the communities affected, in the case of communities having such councils; and
  - (b) in any case, the council of any [<sup>F483</sup>county or county borough] in which any community affected is situated.

#### Textual Amendments

**F482** Words in s. 184 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 295** (with Sch. 7)

**F483** Words in s. 184(2)(b) substituted (1.4.1996) by [1994 c. 19, s. 22\(5\)](#), **Sch. 11**, para. 3(5) (with ss. 54(4) (7), 55(5), [Sch. 17 paras. 22\(1\), 23\(2\)](#)); [S.I. 1996/396](#), art. 3, **Sch. 1**

*Savings in respect of existing drainage obligations*

### 185 Savings in respect of existing drainage obligations.

- (1) Nothing in the flood defence provisions of this Act shall operate to release any person from an obligation to which section 21 of the <sup>M70</sup>Land Drainage Act 1991 applies.

*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The functions of the [<sup>F484</sup>appropriate agency] as respects the doing of any work under the flood defence provisions of this Act are not to be treated as in any way limited by the fact that some other person is under an obligation, by reason of tenure, custom, prescription or otherwise, to do that work.

#### Textual Amendments

**F484** Words in s. 185(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 296](#) (with Sch. 7)

#### Marginal Citations

**M70** 1991 c. 59.

### *Interpretation of Part VII*

#### **186 Interpretation of Part VII.**

- (1) In this Part—

“discharge pipe” means a pipe from which discharges are or are to be made under section 163 above;

[<sup>F485</sup>“relevant transferred functions” means any functions which—

- (a) were exercisable by the Agency before 1 April 2013, and
- (b) are functions of the NRBW by virtue of the Natural Resources Body for Wales (Functions) Order 2013,

but this is subject to subsection (1A).]

“resource main” means any pipe, not being a trunk main within the meaning of the <sup>M71</sup>Water Industry Act 1991, which is or is to be used for the purpose of—

- (a) conveying water from one source of supply to another, from a source of supply to a regulating reservoir or from a regulating reservoir to a source of supply; or
- (b) giving or taking a supply of water in bulk.

[<sup>F486</sup>(1A) For the purposes of the definition of “relevant transferred functions”—

- (a) a function of the Agency was exercisable before 1 April 2013 whether or not the enactment conferring it had come into force before that date, but
- (b) a function is only a relevant transferred function when the enactment conferring the Agency function transferred to or conferred on the NRBW has come into force.]

- (2) In subsection (1) above—

“source of supply” shall be construed without reference to the definition of that expression in section 221 below; and

“supply of water in bulk” has the same meaning as in section 3 above.

- (3) The powers conferred by Chapter I of this Part shall be without prejudice to the powers conferred on the Agency [<sup>F487</sup>or on the NRBW] by any other enactment or by any agreement.

*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

- F485** Words in s. 186(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 297(2)** (with Sch. 7)
- F486** S. 186(1A) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 297(3)** (with Sch. 7)
- F487** Words in s. 186(3) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 297(4)** (with Sch. 7)

#### Marginal Citations

- M71** 1991 c. 56.

## PART VIII

### INFORMATION PROVISIONS

#### *Annual report and publication of information*

<sup>F488</sup>**187** .....

#### Textual Amendments

- F488** S. 187 repealed (1.4.1996) by [1995 c. 25, s. 120\(1\)\(3\)](#), [Sch. 22 para. 168](#), **Sch. 24** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3** (with art. 4)

#### <sup>F489</sup>**188 Duty of the Agency and NRBW to publish information**

- (1) The Agency must—
- (a) collate and publish information from which assessments can be made of the actual and prospective demand for water, and of actual and prospective water resources, in England; and
  - (b) collaborate with others, so far as it considers it appropriate to do so, in collating and publishing any such information or any similar information in relation to places outside England.
- (2) The NRBW must—
- (a) collate and publish information from which assessments can be made of the actual and prospective demand for water, and of actual and prospective water resources, in Wales; and
  - (b) collaborate with others, so far as it considers it appropriate to do so, in collating and publishing any such information or any similar information in relation to places outside Wales.]

#### Textual Amendments

- F489** S. 188 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 298** (with Sch. 7)

*Status: Point in time view as at 17/09/2018.*

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*Registers etc. to be kept by the <sup>F490</sup>appropriate agency]*

#### Textual Amendments

**F490** Words in s. 189 cross-heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

### 189 Register of abstraction and impounding licences.

- (1) The <sup>F491</sup>appropriate agency] shall keep, in such manner as may be prescribed, registers containing such information as may be prescribed with respect—
  - (a) to applications made for the grant, revocation or variation of licences under Chapter II of Part II of this Act, including information as to the way in which such applications have been dealt with; and
  - (b) to persons becoming the holders of such licences by virtue of <sup>F492</sup>section 59A, 59B or 59C above].
- (2) Every register kept by the <sup>F491</sup>appropriate agency] under this section shall also contain such information as may be prescribed with respect—
  - (a) to applications made in accordance with regulations under section 64 above; and
  - (b) to licences granted or deemed to be granted, and licences revoked or varied, in accordance with regulations made under that section.
- (3) Subject to any regulations under this section, the information which the <sup>F491</sup>appropriate agency] is required to keep in registers under this section shall continue to include the information which immediately before 1st September 1989 was contained in a register kept by a water authority under section 53 of the <sup>M72</sup>Water Resources Act 1963.
- (4) The contents of every register kept under this section shall be available, at such place as may be prescribed, for inspection by the public at all reasonable hours.

#### Textual Amendments

**F491** Words in ss. 189-197 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

**F492** Words in s. 189(1)(b) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 23(3)**, 105(3); S.I. 2006/984, art. 2(m) (with Sch. para. 3)

#### Modifications etc. (not altering text)

**C162** S. 189 modified (1.4.2005) by [The Water Act 2003 \(Commencement No. 4, Transitional Provisions and Savings\) Order 2005 \(S.I. 2005/968\)](#), art. 4(1)(3), Sch. 1 paras. 7(10), 8(3), 9

#### Marginal Citations

**M72** 1963 c. 38.

*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**190 Pollution control register.**

(1) It shall be the duty of the [<sup>F491</sup>appropriate agency] to maintain, in accordance with regulations made by the Secretary of State, registers containing prescribed particulars of [<sup>F493</sup>or relating to]—

(a) any notices of water quality objectives or other notices served under section 83 above;

<sup>F494</sup>(b) .....

<sup>F495</sup>(c) .....

<sup>F496</sup>(d) .....

(e) the following, that is to say—

(i) samples of water or effluent taken by the [<sup>F491</sup>appropriate agency] for the purposes of any of the water pollution provisions of this Act;

(ii) information produced by analyses of those samples;

(iii) such information with respect to samples of water or effluent taken by any other person, and the analyses of those samples, as is acquired by the [<sup>F491</sup>appropriate agency] from any person under arrangements made by the [<sup>F491</sup>appropriate agency] for the purposes of any of those provisions; and

(iv) the steps taken in consequence of any such information as is mentioned in any of sub-paragraphs (i) to (iii) above;

<sup>F497</sup> .....

<sup>F497</sup>(f) .....

<sup>F498</sup>(g) .....

<sup>F499</sup>(h) .....

<sup>F500</sup>(j) .....

<sup>F501</sup>(k) .....

[<sup>F502</sup>(l) directions given by the Secretary of State in relation to the [<sup>F491</sup>appropriate agency's] functions under the water pollution provisions of this Act;

<sup>F503</sup>(m) .....

<sup>F504</sup>(n) .....

(o) works notices under section 161A above;

(p) appeals under section 161C above;

(q) convictions for offences under section 161D above;

(r) such other matters relating to the quality of water or the pollution of water as may be prescribed by the Secretary of State.

(1A) Where information of any description is excluded from any register by virtue of section 191B below, a statement shall be entered in the register indicating the existence of information of that description.]

(2) It shall be the duty of the [<sup>F491</sup>appropriate agency]—

(a) to secure that the contents of registers maintained by the [<sup>F491</sup>appropriate agency] under this section are available, at all reasonable times, for inspection by the public free of charge; and

(b) to afford members of the public reasonable facilities for obtaining from the [<sup>F491</sup>appropriate agency], on payment of reasonable charges, copies of entries in any of the registers.



*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

[<sup>F505</sup>and, for the purposes of this subsection, places may be prescribed by the Secretary of State 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.]

(3) Section 101 above shall have effect in relation to any regulations under this section as it has effect in relation to any subordinate legislation under Part III of this Act.

[<sup>F506</sup>(4) The Secretary of State may give to the [<sup>F491</sup>appropriate agency] 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) above or which, by virtue of section 191A or 191B below, ought to have been excluded from the register.]

<sup>F507</sup>(5) .....

#### Textual Amendments

- F491** Words in ss. 189-197 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)
- F493** Words in s. 190(1) inserted (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 169(2)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (subject to saving provisions in art. 4)
- F494** S. 190(1)(b) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)
- F495** S. 190(1)(c) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)
- F496** S. 190(1)(d) repealed (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 169(3)**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (subject to saving provisions in art. 4)
- F497** S. 190(1)(f) and word preceding it repealed (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 169(4)**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (subject to saving provisions in art. 4)
- F498** S. 190(1)(g) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)
- F499** S. 190(1)(h) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)
- F500** S. 190(1)(j) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)
- F501** S. 190(1)(k) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)
- F502** S. 190(1)(g)-(r)(1A) added (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 169(4)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (subject to saving provisions in art. 4)
- F503** S. 190(1)(m) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)
- F504** S. 190(1)(n) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)
- F505** Words in s. 190(2) added (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 169(5)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (subject to saving provisions in art. 4)

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- F506** S. 190(4)(5) added (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 169(6)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (subject to saving provisions in art. 4)
- F507** S. 190(5) repealed (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(2)(o), **Sch. 28** (with reg. 1(2), Sch. 4)

**Modifications etc. (not altering text)**

- C163** S. 190 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).
- C164** S. 190 modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), reg. 1(b), **Sch. 1**)
- C165** S. 190 modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

**191 Register for the purposes of works discharges.**

- (1) The [<sup>F491</sup>appropriate agency] shall keep a register of persons and premises for the purposes of section 164 above.
- (2) The [<sup>F491</sup>appropriate agency] shall enter the name and address of a person in that register in respect of any premises which abut on any watercourse if that person has requested to be so registered and is either—
  - (a) the owner or occupier of those premises; or
  - (b) an officer of an association of owners or occupiers of premises which abut on that watercourse and include those premises.
- (3) If the [<sup>F491</sup>appropriate agency] contravenes, without reasonable excuse, any of the requirements of this section, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

**Textual Amendments**

- F491** Words in ss. 189-197 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

**[<sup>F508</sup>191A] Exclusion from registers of information affecting national security.**

- (1) No information shall be included in a register kept or maintained by the [<sup>F491</sup>appropriate agency] under any provision 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 purpose of securing the exclusion from registers of information to which subsection (1) above applies, give to the [<sup>F491</sup>appropriate agency] 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;

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and no information referred to the Secretary of State in pursuance of paragraph (b) above shall be included in any such register until the Secretary of State determines that it should be so included.

- (3) The [F491appropriate agency] shall notify the Secretary of State of any information it excludes from a register in pursuance of directions under subsection (2) above.
- (4) A person may, as respects any information which appears to him to be information to which subsection (1) above 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 the [F491appropriate agency] 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.]

**Textual Amendments**

**F491** Words in ss. 189-197 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

**F508** S. 191A inserted (21.11.1996 for certain purposes and 31.12.1996 otherwise) by [1995 c. 25, s. 120\(1\)](#), **Sch. 22 para. 170** (with ss. 7(6), 115, 117); [S.I. 1996/2909](#), **arts. 2, 3** (subject to saving provisions in art. 4)

**Modifications etc. (not altering text)**

**C166** S. 191A applied (with modifications) (1.4.1999) by [S.I. 1998/2746](#), **reg. 14(3)**

**[F509] 191B 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 the [F491appropriate agency] under any provision 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) below;

but information is not commercially confidential for the purposes of this section unless it is determined under this section to be so by the [F491appropriate agency] or, on appeal, by the Secretary of State.

- (2) Where information is furnished to the [F491appropriate agency] for the purpose of—
  - <sup>F510</sup>(a) .....
  - <sup>F511</sup>(b) .....
  - (c) complying with a notice under section 202 below,then, if the person furnishing it applies to the [F491appropriate agency] to have the information excluded from any register kept or maintained by the [F491appropriate agency] under any provision of this Act, on the ground that it is commercially confidential (as regards himself or another person), the [F491appropriate agency] shall determine whether the information is or is not commercially confidential.

- (3) A determination under subsection (2) above must be made within the period of fourteen days beginning with the date of the application and if the [F491appropriate

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agency] 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 the [<sup>F491</sup>appropriate agency] that any information (other than information furnished in circumstances within subsection (2) above) which has been obtained by the [<sup>F491</sup>appropriate agency] under or by virtue of any provision of any enactment might be commercially confidential, the [<sup>F491</sup>appropriate agency] 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 the [<sup>F491</sup>appropriate agency] under any provision 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 the [<sup>F491</sup>appropriate agency] for the purpose of justifying any such objection;

and, if any representations are made, the [<sup>F491</sup>appropriate agency] shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

- (5) Where, under subsection (2) or (4) above, the [<sup>F491</sup>appropriate agency] 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 until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn.

- [<sup>F512</sup>(6) Section 114 of the 1995 Act (delegation or reference to appeals etc) applies to any appeal brought under subsection (5).

- (6A) If either party to the appeal so requests, or the Secretary of State or Welsh Ministers so decide, an appeal shall be or continue in the form of a hearing (which must be held in private).

- (6B) The Secretary of State may by regulations make provision as to appeals under subsection (5) to the Secretary of State, and the Welsh Ministers may by regulations make provision as to appeals under that subsection to them; and the regulations may, in particular, may make provision as to—

- (a) the period within which and the manner in which appeals are to be brought; and
- (b) the manner in which appeals are to be considered.]

- (7) The Secretary of State may give to the [<sup>F491</sup>appropriate agency] directions as to specified information, or descriptions of information, which the public interest requires to be included in registers kept or maintained by the [<sup>F491</sup>appropriate agency] under any provision 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

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beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the [F491 appropriate agency] for the information to remain excluded from the register on the ground that it is still commercially confidential and the [F491 appropriate agency] shall determine whether or not that is the case.

- (9) Subsections (5) and (6) above shall apply in relation to a determination under subsection (8) above as they apply in relation to a determination under subsection (2) or (4) above.
- (10) The Secretary of State may by regulations substitute (whether in all cases or in such classes or descriptions of case as may be specified in the regulations) for the period for the time being specified in subsection (3) above 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 the register would prejudice to an unreasonable degree the commercial interests of that individual or person.

F513(12) . . . . . ]

**Textual Amendments**

- F491** Words in ss. 189-197 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)
- F509** S. 191B inserted (21.11.1996 for certain purposes and 31.12.1996 otherwise) by [1995 c. 25, s. 120\(1\)](#), **Sch. 22 para. 170** (with ss. 7(6), 115, 117); [S.I. 1996/2909](#), **arts. 2, 3** (subject to saving provisions in art. 4)
- F510** S. 191B(2)(a) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(p), **Sch. 28** (with reg. 1(2), Sch. 4)
- F511** S. 191B(2)(b) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(p), **Sch. 28** (with reg. 1(2), Sch. 4)
- F512** Ss. 191B(6)-(6B) substituted for s. 191B(6) (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(9)** (with reg. 1(2), Sch. 4)
- F513** S. 191B(12) repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(p), **Sch. 28** (with reg. 1(2), Sch. 4)

**Modifications etc. (not altering text)**

- C167** S. 191B applied (with modifications) (1.4.1999) by [S.I. 1998/2746](#), **reg. 14(3)**
- C168** S. 191B(5): power to delegate functions conferred (1.4.1996) by [1995 c. 25, s. 114\(2\)\(a\)\(v\)](#) (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3** (with art. 4)

**192 Maps of fresh-water limits.**

- (1) The Secretary of State—
  - (a) shall deposit maps with the [F491 appropriate agency] showing what appear to him to be the fresh-water limits of every relevant river or watercourse; and
  - (b) may from time to time, if he considers it appropriate to do so by reason of any change of what appears to him to be the fresh-water limit of any river or watercourse, deposit a map showing a revised limit for that river or watercourse.

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- (2) It shall be the duty of the [<sup>F491</sup>appropriate agency] to keep any maps deposited with it under subsection (1) above available, at all reasonable times, for inspection by the public free of charge.
- (3) In this section “relevant river or watercourse” has the same meaning as in section 104 above.

#### Textual Amendments

**F491** Words in ss. 189-197 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

*[<sup>F514</sup>Main river map for England*

#### Textual Amendments

**F514** Ss. 193-194E substituted for ss. 193, 194 (1.10.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 59(2), 94**; S.I. 2014/1823, art. 3

### 193 The main river map for England

- (1) The Agency must keep the main river map for England.
- (2) For the purposes of this Act the main river map for England is a record of areas in England which—
  - (a) shows the extent to which any watercourse or part of a watercourse is to be treated as a main river or as part of a main river for the purposes of this Act, and
  - (b) indicates which (if any) of those watercourses are watercourses designated in a scheme made under section 137.
- (3) The map is conclusive as to the extent to which a watercourse in England is to be treated as a main river or as part of a main river for the purposes of this Act.
- (4) The map must specify the date on which it takes effect.
- (5) The Agency must keep the map in electronic form.
- (6) In this section and sections 193A to 193E “watercourse” has the same meaning as in Part 4 of this Act.

### 193A Inspection and copies

- (1) The Agency must provide reasonable facilities for inspecting the main river map for England in electronic form.
- (2) The Agency must on request provide any person with—
  - (a) a hard copy of all or part of the map, or
  - (b) data comprising all or part of the map in electronic form.
- (3) The Agency may charge a fee for providing a copy or data under subsection (2), but the fee—

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- (a) must, in the case of a person appearing to the Agency to have requested a copy or data for commercial purposes, represent a reasonable usage fee, and
  - (b) in any other case, may not exceed the reasonable costs of providing the copy or data.
- (4) The Agency must on request provide a body mentioned in the first column of the following table with a hard copy of, or data comprising, such part of the main river map for England as is described in the second column of the entry for that body.

A local authority in England	The part that relates to the local authority's area
An internal drainage board for an internal drainage district that is wholly or partly in England	The part that relates to its district, so far as that district is in England
A water company that exercises functions in relation to an area in England	The part that relates to that area
A highway authority that exercises functions in relation to highways in England	The part that relates to the area in England in relation to which it exercises functions
A navigation authority that exercises functions in relation to an area in England	The part that relates to that area

- (5) The Documentary Evidence Act 1868 has effect as if—
- (a) the Agency were mentioned in the first column of the Schedule to that Act;
  - (b) any member of the staff of the Agency authorised to act on behalf of the Agency were specified in the second column of the Schedule to that Act in connection with the Agency;
  - (c) the regulation referred to in that Act included the main river map for England kept by the Agency;
  - (d) references to a copy included references to a print-out of information kept in electronic form.

### **193B Replacing the main river map for England**

- (1) The Agency may at any time replace the existing main river map for England for the purpose of including—
- (a) a change which, pursuant to section 193(2)(b), is required by the making, amendment or revocation of a scheme under section 137,
  - (b) a change to give effect to a determination under section 193C, or
  - (c) a change directed by the Secretary of State under section 193D(5) (following an appeal against a determination).
- (2) A replacement map may not include other changes.
- (3) A replacement map must specify the date on which it takes effect.

### **193C Determinations as to main rivers**

- (1) Subject to the following provisions of this section, the Agency may determine that—

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- (a) such watercourse or part of a watercourse in England as is specified in the determination is to be treated for the purposes of this Act as a main river or part of a main river;
  - (b) such watercourse or part of a watercourse in England as is specified in the determination (not being a watercourse designated in a scheme made under section 137) is no longer to be treated for the purposes of this Act as a main river or part of a main river.
- (2) Before making a determination under subsection (1) as regards a watercourse, the Agency must—
- (a) publish (in such manner as it considers appropriate) the determination it proposes to make, and
  - (b) consider representations made within the time and in the manner specified by the Agency when publishing the determination.
- (3) The Agency must consult the NRBW before making a determination under subsection (1)—
- (a) which affects a watercourse part of which is in England and part of which is in Wales, and
  - (b) in which it seems to the Agency that the NRBW has an interest.
- (4) Having taken such steps as are required by subsections (2) and (3), the Agency may—
- (a) decide not to make a determination, or
  - (b) decide to make a determination in accordance with what was proposed under subsection (2)(a) or otherwise.
- (5) The Agency must publish (in such manner as it considers appropriate)—
- (a) that decision;
  - (b) the terms of any determination made;
  - (c) if a determination is made, the date on which a replacement map will give effect to the determination.
- (6) The date specified under subsection (5)(c) may not be before the end of a period of six weeks beginning with the day on which the matters specified in subsection (5) are published.
- (7) The Agency must also inform those persons affected by the proposal who made representations in accordance with subsection (2)(b) containing an objection to the proposal as to the matters referred to in subsection (5).

### **193D Appeals**

- (1) A person aggrieved by a determination under section 193C may appeal to the Secretary of State.
- (2) An appeal must be made before the end of a period of six weeks beginning with the day on which the matters referred to in section 193C(5) are published.
- (3) Where an appeal is made against a determination, a replacement map under section 193B may not include a change to give effect to the determination except as specified in this section.
- (4) The Secretary of State may appoint a person to make a report to assist the Secretary of State in determining the appeal.



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- (5) If the Secretary of State allows the appeal in whole or in part, the Secretary of State may by direction to the Agency—
  - (a) specify a change to be included in a replacement map under section 193B, and
  - (b) specify the date on which that change is to take effect.
- (6) If the Secretary of State dismisses the appeal, the Agency may include a change to give effect to its determination in a replacement map, the replacement map to have effect on such date as the Secretary of State may direct.
- (7) The Secretary of State may direct the Agency to publish the Secretary of State's decision in such manner as the direction may specify.

### **193E Guidance**

- (1) The Secretary of State may from time to time issue guidance to the Agency about the exercise of its functions under sections 193 to 193D.
- (2) The guidance may in particular include guidance as to—
  - (a) determining whether or not a watercourse or part of a watercourse is suitable to become or to remain a main river or a part of a main river;
  - (b) what kind of publication is appropriate under section 193C(2) and (5).
- (3) The Agency must have regard to the guidance in carrying out its functions under sections 193 to 193D.

#### *Main river map for Wales*

### **194 The main river map for Wales**

- (1) The NRBW must keep the main river map for Wales.
- (2) For the purposes of this Act the main river map for Wales is a record of areas in Wales which—
  - (a) shows the extent to which any watercourse or part of a watercourse is to be treated as a main river or as part of a main river for the purposes of this Act, and
  - (b) indicates which (if any) of those watercourses are watercourses designated in a scheme made under section 137.
- (3) The map is conclusive as to the extent to which a watercourse in Wales is to be treated as a main river or as part of a main river for the purposes of this Act.
- (4) The map must specify the date on which it takes effect.
- (5) The NRBW must keep the map in electronic form.
- (6) In this section and sections 194A to 194E “watercourse” has the same meaning as in Part 4 of this Act.

### **194A Inspection and copies**

- (1) The NRBW must provide reasonable facilities for inspecting the main river map for Wales in electronic form.

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- (2) The NRBW must on request provide any person with—
- (a) a hard copy of all or part of the map, or
  - (b) data comprising all or part of the map in electronic form.
- (3) The NRBW may charge a fee for providing a copy or data under subsection (2), but the fee—
- (a) must, in the case of a person appearing to the NRBW to have requested a copy or data for commercial purposes, represent a reasonable usage fee, and
  - (b) in any other case, may not exceed the reasonable costs of providing the copy or data.
- (4) The NRBW must on request provide a body mentioned in the first column of the following table with a hard copy of, or data comprising, such part of the main river map for Wales as is described in the second column of the entry for that body.

A local authority in Wales	The part that relates to the local authority's area
An internal drainage board for an internal drainage district that is wholly or partly in Wales	The part that relates to its district, so far as that district is in Wales
A water company that exercises functions in relation to an area in Wales	The part that relates to that area
A highway authority that exercises functions in relation to highways in Wales	The part that relates to the area in Wales in relation to which it exercises functions
A navigation authority that exercises functions in relation to an area in Wales	The part that relates to that area

- (5) The Documentary Evidence Act 1868 has effect as if—
- (a) the NRBW were mentioned in the first column of the Schedule to that Act;
  - (b) any member of the staff of the NRBW authorised to act on behalf of the NRBW were specified in the second column of the Schedule to that Act in connection with the NRBW;
  - (c) the regulation referred to in that Act included the main river map for Wales kept by the NRBW;
  - (d) references to a copy included references to a print-out of information kept in electronic form.

#### **194B Replacing the main river map for Wales**

- (1) The NRBW may at any time replace the existing main river map for Wales for the purpose of including—
- (a) a change which, pursuant to section 194(2)(b), is required by the making, amendment or revocation of a scheme under section 137,
  - (b) a change to give effect to a determination under section 194C, or
  - (c) a change directed by the Welsh Ministers under section 194D(5) (following an appeal against a determination).
- (2) A replacement map may not include other changes.

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- (3) A replacement map must specify the date on which it takes effect.

#### **194C Determinations as to main rivers**

- (1) Subject to the following provisions of this section, the NRBW may determine that—
- (a) such watercourse or part of a watercourse in Wales as is specified in the determination is to be treated for the purposes of this Act as a main river or part of a main river;
  - (b) such watercourse or part of a watercourse in Wales as is specified in the determination (not being a watercourse designated in a scheme made under section 137) is no longer to be treated for the purposes of this Act as a main river or part of a main river.
- (2) Before making a determination under subsection (1) as regards a watercourse, the NRBW must—
- (a) publish (in such manner as it considers appropriate) the determination it proposes to make, and
  - (b) consider representations made within the time and in the manner specified by the NRBW when publishing the determination.
- (3) The NRBW must consult the Agency before making a determination under subsection (1)—
- (a) which affects a watercourse part of which is in Wales and part of which is in England, and
  - (b) in which it seems to the NRBW that the Agency has an interest.
- (4) Having taken such steps as are required by subsections (2) and (3), the NRBW may—
- (a) decide not to make a determination, or
  - (b) decide to make a determination in accordance with what was proposed under subsection (2)(a) or otherwise.
- (5) The NRBW must publish (in such manner as it considers appropriate)—
- (a) that decision;
  - (b) the terms of any determination made;
  - (c) if a determination is made, the date on which a replacement map will give effect to the determination.
- (6) The date specified under subsection (5)(c) may not be before the end of a period of six weeks beginning with the day on which the matters specified in subsection (5) are published.
- (7) The NRBW must also inform those persons affected by the proposal who made representations in accordance with subsection (2)(b) containing an objection to the proposal as to the matters referred to in subsection (5).

#### **194D Appeals**

- (1) A person aggrieved by a determination under section 194C may appeal to the Welsh Ministers.
- (2) An appeal must be made before the end of a period of six weeks beginning with the day on which the matters referred to in section 194C(5) are published.

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- (3) Where an appeal is made against a determination, a replacement map under section 194B may not include a change to give effect to the determination except as specified in this section.
- (4) The Welsh Ministers may appoint a person to make a report to assist them in determining the appeal.
- (5) If the Welsh Ministers allow the appeal in whole or in part, they may by direction to the NRBW—
  - (a) specify a change to be included in a replacement map under section 194B, and
  - (b) specify the date on which that change is to take effect.
- (6) If the Welsh Ministers dismiss the appeal, the NRBW may include a change to give effect to its determination in a replacement map, the replacement map to have effect on such date as the Welsh Ministers may direct.
- (7) The Welsh Ministers may direct the NRBW to publish their decision in such manner as the direction may specify.

**194E Guidance**

- (1) The Welsh Ministers may from time to time issue guidance to the NRBW about the exercise of its functions under sections 194 to 194D.
- (2) The guidance may in particular include guidance as to—
  - (a) determining whether or not a watercourse or part of a watercourse is suitable to become or to remain a main river or a part of a main river;
  - (b) what kind of publication is appropriate under section 194C(2) and (5).
- (3) The NRBW must have regard to the guidance in carrying out its functions under sections 194 to 194D.]

<sup>F515</sup> <sup>F514</sup> **194 Maps of waterworks.**

.....]

**Textual Amendments**

**F514** Ss. 193-194E substituted for ss. 193, 194 (1.10.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 59(2), 94**; S.I. 2014/1823, **art. 3**

**F515** S. 195 repealed (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 60(1), 94(2)(n)**

*Provision and acquisition of information etc.*

<sup>F516</sup> **196** .....

**Textual Amendments**

**F516** S. 196 repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), [Sch. 22 para. 171](#), **Sch. 24** (with [ss. 7\(6\)](#), [115](#), [117](#)); S.I. 1996/186, **art. 3** (with [art. 4](#))

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## 197 Provision of information about water flow etc.

- (1) It shall be the duty of the [<sup>F491</sup>appropriate agency] —
  - (a) to provide a water undertaker with all such information to which this section applies as is in the possession of the [<sup>F491</sup>appropriate agency] and is reasonably requested by the undertaker for purposes connected with the carrying out of its functions; and
  - (b) to provide reasonable facilities to all persons—
    - (i) for the inspection of the contents of any records kept by the [<sup>F491</sup>appropriate agency] and containing information to which this section applies; and
    - (ii) for the taking of copies of, or of extracts from, any such records.
- (2) It shall be the duty of every water undertaker to provide the [<sup>F491</sup>appropriate agency] with all such information to which this section applies as is in the possession of the undertaker and is reasonably requested by the [<sup>F491</sup>appropriate agency] for purposes connected with the carrying out of any of its functions.
- (3) Where records of the flow, level or volume of any inland waters, other than discrete waters, are kept by a person other than a water undertaker, the [<sup>F491</sup>appropriate agency] shall have the right at all reasonable times—
  - (a) to inspect the contents of any of those records; and
  - (b) to take copies of, or of extracts from, the contents of any of those records;and any person who, without reasonable excuse, refuses or fails to permit the [<sup>F491</sup>appropriate agency] to exercise its right under this subsection shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.
- (4) Information provided to a water undertaker or to the [<sup>F491</sup>appropriate agency] under subsection (1) or (2) above shall be provided in such form and in such manner and at such times as the undertaker or, as the case may be, the [<sup>F491</sup>appropriate agency] may reasonably require; and the duties of the [<sup>F491</sup>appropriate agency] under subsection (1) above shall extend to information provided to or obtained by the [<sup>F491</sup>appropriate agency] under subsection (2) or (3) above.
- (5) Information or facilities provided under subsection (1) or (2) above to the [<sup>F491</sup>appropriate agency], to a water undertaker, to a local authority or joint planning board, or to an internal drainage board, shall be provided free of charge; and facilities provided under subsection (1) above to other persons may be provided on terms requiring the payment by persons making use of the facilities of such reasonable charges as they may determine.
- (6) The duties of a water undertaker under subsection (2) above shall be enforceable under section 18 of the <sup>M73</sup>Water Industry Act 1991 by the Secretary of State.
- (7) This section applies to information about the flow, level or volume of any inland waters or any water contained in underground strata, about rainfall or any fall of snow, hail or sleet or about the evaporation of any water.

### Textual Amendments

**F491** Words in ss. 189-197 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 299](#) (with [Sch. 7](#))

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### Marginal Citations

M73 1991 c. 56.

## 198 Information about underground water.

- (1) Any person who, for the purpose of searching for or abstracting water, proposes to sink a well or borehole intended to reach a depth of more than fifty feet below the surface shall, before he begins to do so, give notice to [<sup>F517</sup>United Kingdom Research and Innovation (“UKRI”)] of his intention to do so.
- (2) Any person sinking any such well or borehole as is mentioned in subsection (1) above shall-
  - (a) keep a journal of the progress of the work and, on completion or abandonment of the work, send a complete copy of the journal to [<sup>F518</sup>UKRI];
  - (b) send to [<sup>F519</sup>UKRI] particulars of any test made before completion or abandonment of the work of the flow of water;
  - (c) allow any person authorised by [<sup>F520</sup>UKRI] for the purpose, on production of some duly authenticated document showing his authority, at all reasonable times to exercise any of the rights specified in subsection (5) below.
- (3) The journal required to be kept under this section shall include measurements of—
  - (a) the strata passed through; and
  - (b) the levels at which water is struck and subsequently rests.
- (4) The particulars required to be sent to [<sup>F521</sup>UKRI] under subsection (2)(b) above shall specify—
  - (a) the rate of flow throughout the test;
  - (b) the duration of the test;
  - (c) where practicable, the water levels during the test and afterwards until the water returns to its natural level; and
  - (d) where the well or borehole is sunk in connection with an existing pumping station, the rate of pumping at the existing works during the test.
- (5) The rights mentioned in subsection (2)(c) above are the rights, subject to section 205 below—
  - (a) to have free access to the well or borehole;
  - (b) to inspect the well or borehole and the material extracted from it;
  - (c) to take specimens of any such material and of water abstracted from the well or borehole; and
  - (d) to inspect and take copies of or extracts from the journal required to be kept under this section.
- (6) Where the person sinking a well or borehole on any land is not the occupier of the land, the obligation imposed on that person by virtue of subsection (2)(c) above shall be the obligation of the occupier as well.
- (7) Where—
  - (a) any person contracts to sink any well or borehole on land belonging to or occupied by another; and
  - (b) the carrying out of the work is under the control of the contractor,

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the contractor and no other person shall be deemed for the purposes of this section to be the person sinking the well or borehole.

- (8) Any person who fails to comply with any obligation imposed on him by this section shall be guilty of an offence and liable, on summary conviction—
- (a) to a fine not exceeding level 3 on the standard scale; and
  - (b) where the the offence continues after conviction, to a further fine of £20 for every day during which it so continues.

#### Textual Amendments

- F517** Words in s. 198(1) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 12 para. 15\(2\)\(a\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)
- F518** Word in s. 198(2)(a) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 12 para. 15\(2\)\(b\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)
- F519** Word in s. 198(2)(b) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 12 para. 15\(2\)\(c\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)
- F520** Word in s. 198(2)(c) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 12 para. 15\(2\)\(c\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)
- F521** Word in s. 198(4) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 12 para. 15\(2\)\(d\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)

#### 199 Notice etc. of mining operations which may affect water conservation.

- (1) Where a person proposes to construct or extend a boring for the purpose of searching for or extracting minerals, he shall, before he begins to construct or extend the boring, give to the [<sup>F522</sup>appropriate agency] a notice of his intention in the prescribed form.
- [<sup>F523</sup>(2) Where a notice under subsection (1) above is given to the [<sup>F522</sup>appropriate agency] by any person, the [<sup>F522</sup>appropriate agency] may (subject to section 199A below) by notice to that person require him, in connection with the construction, extension or use of the work to which that person's notice relates, to take such reasonable measures for conserving water as are specified in the notice.
- (2A) The measures that may be specified in a notice under subsection (2) above shall be measures which, in the opinion of the [<sup>F522</sup>appropriate agency], will not interfere with the winning of minerals.
- (3) Section 70 above shall apply to the restrictions imposed by this section as it applies to the restrictions imposed by sections 24 and 25 above.]
- (4) Any person who contravenes subsection (1) above or fails to comply with a [<sup>F524</sup>notice under] subsection (2) above shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

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### Textual Amendments

- F522** Words in ss. 199-203 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 299](#) (with [Sch. 7](#))
- F523** S. 199(2)(2A)(3) substituted for s. 199(2)(3) (1.4.2006) by [Water Act 2003 \(c. 37\)](#), [ss. 8\(5\)\(a\)](#), 105(3); [S.I. 2006/984](#), [art. 2\(e\)](#) (with [Sch. paras. 4, 5](#))
- F524** Words in s. 199(4) substituted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), [ss. 8\(5\)\(b\)](#), 105(3); [S.I. 2006/984](#), [art. 2\(e\)](#) (with [Sch. paras. 4, 5](#))

### [<sup>F525</sup>199A Appeals against conservation notices under section 199

- (1) The person on whom a notice under section 199(2) above (“a conservation notice”) is served may, by notice to the Secretary of State, appeal to him against the conservation notice on either or both of the following grounds, that is to say—
  - (a) that the measures required by the conservation notice are not reasonable;
  - (b) that those measures would interfere with the winning of minerals.
- (2) Any notice of appeal against a conservation notice shall be served within such period (not being less than twenty-eight days from the date of service of the conservation notice) and in such manner as may be prescribed.
- (3) Before determining an appeal against a conservation notice, the Secretary of State may, if he thinks fit—
  - (a) cause a local inquiry to be held; or
  - (b) afford to the appellant and the [<sup>F522</sup>appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;
 and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the appellant or the [<sup>F522</sup>appropriate agency] to be heard with respect to an appeal.
- (4) On an appeal against a conservation notice the Secretary of State may confirm, quash or vary the notice as he may consider appropriate.
- (5) The decision of the Secretary of State on any appeal against a conservation notice shall be final.
- (6) The Secretary of State may by regulations make provision as to the manner in which appeals against conservation notices are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such appeals or decisions on any such appeals.
- (7) Section 69 above applies to a decision of the Secretary of State on any appeal to him under this section as it applies to a decision of his on an appeal to him under Chapter 2 of Part 2, taking the reference in subsection (2)(b) of that section to that Chapter as a reference to this section.
- (8) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals).]



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#### Textual Amendments

- F522** Words in ss. 199-203 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)
- F525** S. 199A inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 8(6)**, 105(3); S.I. 2006/984, art. 2(e) (with Sch. paras. 4, 5)

### 200 Gauges and records kept by other persons.

- (1) Subject to subsection (3) below, any person other than the [<sup>F522</sup>appropriate agency], who proposes to install a gauge for measuring and recording the flow, level or volume of any inland waters other than discrete waters—
  - (a) shall give notice to the [<sup>F522</sup>appropriate agency] of his proposal to install the gauge; and
  - (b) shall not begin the work of installing it before the end of the period of three months beginning with the date of service of the notice or such shorter period as the [<sup>F522</sup>appropriate agency] may in any particular case allow.
- (2) Not more than one month after any such work as is mentioned in paragraph (b) of subsection (1) above is completed, the person required to give notice under that subsection shall give notice to the [<sup>F522</sup>appropriate agency] stating where the records obtained by means of the gauge are to be kept.
- (3) Subsections (1) and (2) above shall not apply—
  - (a) to any gauge installed for the sole purpose of indicating the level of any inland waters for the benefit of persons who fish in them; or
  - (b) to any gauge which is removed at or before the end of the period of twenty-eight days beginning with the date on which it is installed.
- (4) Any person who contravenes subsection (1) or (2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

#### Textual Amendments

- F522** Words in ss. 199-203 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

### [<sup>F526</sup>201 Power to require information with respect to abstraction.

- (1) Subject to subsection (2) below, the Secretary of State or the [<sup>F522</sup>appropriate agency] may serve on any person a notice requiring that person to furnish him or, as the case may be, it, within a period or at times specified in the notice and in a form and manner so specified, with such information as is reasonably required by the Secretary of State or by the [<sup>F522</sup>appropriate agency] for the purpose of carrying out any of his or, as the case may be, its water resources functions.
- (2) The Secretary of State shall have power by regulations to make provision for restricting the information which may be required under subsection (1) above and for determining the form in which the information is to be so required.

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- (3) A person who fails without reasonable excuse to comply with the requirements of a notice served on him under this section shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.
- (4) References in this section to the water resources functions of the Secretary of State or of the [F522appropriate agency] are references to the functions of the Secretary of State or of the [F522appropriate agency] under Part 2 of this Act or under any provisions not contained in that Part which are related water resources provisions in relation to Chapter 2 of that Part.]

**Textual Amendments**

**F522** Words in ss. 199-203 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

**F526** S. 201 substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 70, 105(3); S.I. 2005/968, art. 2(k)

**Modifications etc. (not altering text)**

**C169** S. 201 applied (1.4.2006) by [Water Act 2003 \(c. 37\)](#), ss. 33(3)(c), 105(3); S.I. 2006/984, art. 2(p)

**202 Information and assistance required in connection with the control of pollution.**

- (1) It shall be the duty of the [F522appropriate agency], if and so far as it is requested to do so by either of the Ministers, to give him all such advice and assistance as appears to it to be appropriate for facilitating the carrying out by him of his functions under the water pollution provisions of this Act.
- (2) Subject to subsection (3) below, either of the Ministers or the [F522appropriate agency] may serve on any person a notice requiring that person to furnish him or, as the case may be, it, within a period or at times specified in the notice and in a form and manner so specified, with such information as is reasonably required by the the Minister in question or by the [F522appropriate agency] for the purpose of carrying out any of his or, as the case may be, its functions under the water pollution provisions of this Act.
- (3) Each of the Ministers shall have power by regulations to make provision for restricting the information which may be required under subsection (2) above and for determining the form in which the information is to be so required.
- (4) A person who fails without reasonable excuse to comply with the requirements of a notice served on him under this section shall be guilty of an offence and [F527liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.]

F528(5) .....

**Textual Amendments**

**F522** Words in ss. 199-203 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)

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**F527** Words in s. 202(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 172(1)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

**F528** S. 202(5) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 172(2), Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### **Modifications etc. (not altering text)**

**C170** S. 202 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).

**C171** S. 202 modified (2.1.2004) by **The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003** (S.I. 2003/3242), regs. 1(a), **19(2)** (with reg. 1(c))

**C172** S. 202 modified by S.I. 2010/675, **Sch. 23 Pt. 8 para. 3 Table 9** (as substituted (1.10.2011) by **The Environmental Permitting (England and Wales) (Amendment) Regulations 2011** (S.I. 2011/2043), reg. 1(b), **Sch. 1**)

**C173** S. 202 modified (1.1.2017) by **The Environmental Permitting (England and Wales) Regulations 2016** (S.I. 2016/1154), reg. 1(1), **Sch. 23 Pt. 7 paras. 1(3), 2** (with regs. 1(3), 77-79, **Sch. 4**)

**C174** S. 202 modified (10.4.2017) by **The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017** (S.I. 2017/407), regs. 1(a), **35(2)** (with reg. 1(c))

**C175** S. 202(2) modified (6.1.1997) by S.I. 1996/3001, **reg. 7(3)**

S. 202(2) modified (12.6.1997) by S.I. 1997/1331, **reg. 6(3)**

S. 202(2) modified (12.6.1997) by S.I. 1997/1332, **reg. 6(3)**

**C176** S. 202(2) modified (24.3.2012) by **The Bathing Water Regulations 2008** (S.I. 2008/1097), regs. 1(3) (e), **16(5)**

## **203 Exchange of information with respect to pollution incidents etc.**

(1) It shall be the duty of the [<sup>F522</sup>appropriate agency] to provide a water undertaker with all such information to which this section applies as is in the possession of the [<sup>F522</sup>appropriate agency] and is reasonably requested by the undertaker for purposes connected with the carrying out of its functions.

[<sup>F529</sup>(1A) It shall be the duty of the [<sup>F522</sup>appropriate agency] to provide a [<sup>F530</sup>water supply licensee] with all such information to which this section applies as is in the possession of the [<sup>F522</sup>appropriate agency] and is reasonably requested by the [<sup>F531</sup>licensee] for purposes connected with the carrying on of activities under [<sup>F532</sup>the licensee's licence].]

(2) It shall be the duty of every water undertaker to provide the [<sup>F522</sup>appropriate agency] with all such information to which this section applies as is in the possession of the undertaker and is reasonably requested by the [<sup>F522</sup>appropriate agency] for purposes connected with the carrying out of any of its functions.

[<sup>F533</sup>(2A) It shall be the duty of every [<sup>F534</sup>water supply licensee] to provide the [<sup>F522</sup>appropriate agency] with all such information to which this section applies as is in the possession of the [<sup>F535</sup>licensee] and is reasonably requested by the [<sup>F522</sup>appropriate agency] for purposes connected with the carrying out of any of its functions.]

[<sup>F536</sup>(3) Information provided to a water undertaker, to a [<sup>F537</sup>water supply licensee] or to the [<sup>F522</sup>appropriate agency] under subsection (1), (1A), (2) or (2A) above shall be provided in such form and in such manner and at such times as the undertaker, the [<sup>F538</sup>licensee] or the [<sup>F522</sup>appropriate agency], as the case may be, may reasonably require.]

(4) Information provided under [<sup>F539</sup>subsection (1), (1A), (2) or (2A)] above to a water undertaker [<sup>F540</sup>, to a [<sup>F541</sup>water supply licensee]] or to the [<sup>F522</sup>appropriate agency] shall be provided free of charge.

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- (5) The duties of
- <sup>F542</sup>(a) a water undertaker under subsection (2) above; or
  - (b) a [<sup>F543</sup>water supply licensee] under subsection (2A) above,
- shall] be enforceable under section 18 of the <sup>M74</sup>Water Industry Act 1991 by the Secretary of State.
- (6) This section applies to information—
- (a) about the quality of any controlled waters or of any other waters; or
  - (b) about any incident in which any poisonous, noxious or polluting matter or any <sup>F544</sup>... waste matter has entered any controlled waters or other waters.
- (7) In this section “controlled waters” has the same meaning as in Part III of this Act.
- <sup>F545</sup>(8) Any reference in this section to a [<sup>F546</sup>water supply licensee] is a reference to [<sup>F547</sup>a person] holding a licence under Chapter 1A of Part 2 of the Water Industry Act 1991.]

#### Textual Amendments

- F522** Words in ss. 199-203 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 299** (with Sch. 7)
- F529** S. 203(1A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 8 para. 53(2)(a)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F530** Words in s. 203(1A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 125(2)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F531** Word in s. 203(1A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 125(2)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F532** Words in s. 203(1A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 125(2)(c)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F533** S. 203(2A) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 8 para. 53(2)(b)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F534** Words in s. 203(2A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 125(3)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F535** Word in s. 203(2A) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 125(3)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F536** S. 203(3) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 8 para. 53(2)(c)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F537** Words in s. 203(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 125(4)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F538** Word in s. 203(3) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 125(4)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F539** Words in s. 203(4) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 8 para. 53(2)(d)(i)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F540** Words in s. 203(4) inserted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 8 para. 53(2)(d)(ii)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F541** Words in s. 203(4) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 125(5)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F542** Words in s. 203(5) substituted (1.12.2005) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 8 para. 53(2)(e)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F543** Words in s. 203(5)(b) substituted (1.4.2016) by [Water Act 2014 \(c. 21\)](#), s. 94(3), **Sch. 7 para. 125(6)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F544** Word in s. 203(6)(b) repealed (6.4.2008) by [The Environmental Permitting \(England and Wales\) Regulations 2007 \(S.I. 2007/3538\)](#), reg. 1(1)(b), Sch. 21 para. 21(2), **Sch. 23** (with reg. 72, Sch. 4)

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- F545** S. 203(8) inserted (1.12.2005) by Water Act 2003 (c. 37), s. 105(3), **Sch. 8 para. 53(2)(f)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F546** Words in s. 203(8) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 125(7)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F547** Words in s. 203(8) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 125(7)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)

#### **Modifications etc. (not altering text)**

- C177** S. 203 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).
- C178** S. 203 modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), reg. 1(b), **Sch. 1**)
- C179** S. 203 modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

#### **Marginal Citations**

- M74** 1991 c. 56.

### *Restriction on disclosure of information*

#### **204 Restriction on disclosure of information.**

- (1) Subject to the following provisions of this section, no information with respect to any particular business which—
- has been obtained by virtue of any of the provisions of this Act; and
  - relates to the affairs of any individual or to any particular business,
- shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.
- (2) Subsection (1) above does not apply to any disclosure of information which is made—
- for the purpose of facilitating the carrying out by either of the Ministers, the Agency, [<sup>F548</sup>the NRBW,] the Scottish Environmental Protection Agency, the [<sup>F549</sup>the Water Services Regulation Authority, the Consumer Council for Water], the [<sup>F550</sup>Competition and Markets Authority] or a local authority of any of his, its or, as the case may be, their functions by virtue of this Act, any of the other consolidation Acts [<sup>F551</sup>, the Water Act 1989, Part I or IIA of the Environmental Protection Act 1990, the 1995 Act, regulations under section 2 of the Pollution Prevention and Control Act 1999, [<sup>F552</sup>the Water Act 2003, [<sup>F553</sup>the Water Act 2014] or the Natural Resources Body for Wales (Establishment) Order 2012 (S.I.2012/1903)];
  - for the purpose of facilitating the performance by a water undertaker [<sup>F554</sup>, sewerage undertaker or [<sup>F555</sup>person] holding a licence under Chapter 1A of Part 2 of the Water Industry Act 1991] of any of the duties imposed [<sup>F556</sup>on the undertaker or, as the case may be, the person] by or under this Act, any of the other consolidation Acts [<sup>F557</sup>, the Water Act 1989 [<sup>F558</sup>, the Water Act 2003 or the Water Act 2014]];
  - in pursuance of any duty imposed by section 197(1)(a) or (2) or [<sup>F559</sup>203(1), (1A), (2) or (2A)] above or [<sup>F560</sup>of any duty imposed by section 27H] of the Water Industry Act 1991;

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- [<sup>F561</sup>(ca) for the purpose of complying with a request under section 14 of the Flood and Water Management Act 2010;]
  - (d) for the purpose of facilitating the carrying out by any person mentioned in Part I of Schedule 24 to this Act of any of his functions under any of the enactments or instruments specified in Part II of that Schedule;
  - [<sup>F562</sup>(e) for the purpose of enabling or assisting the Secretary of State, the Treasury [<sup>F563</sup>, the Financial Conduct Authority, the Prudential Regulation Authority or the Bank of England] to exercise any powers conferred by or under the Financial Services and Markets Act 2000 or by the enactments relating to companies or insolvency;
  - (ea) for the purpose of enabling or assisting any inspector appointed under enactments relating to companies to carry out his functions;]
  - (f) for the purpose of enabling an official receiver to carry out his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a recognised professional body for the purposes of section 391 of the <sup>M75</sup>Insolvency Act 1986 to carry out its functions as such;
  - (g) for the purpose of facilitating the carrying out by <sup>F564</sup>... the Health and Safety Executive of any of its functions under any enactment or of facilitating the carrying out by any enforcing authority, within the meaning of Part I of the <sup>M76</sup>Health and Safety at Work etc. Act 1974, of any functions under a relevant statutory provision, within the meaning of that Act;
  - [<sup>F565</sup>(ga) for the purpose of facilitating the carrying out by the Office for Nuclear Regulation of any of its functions under any enactment;]
  - (h) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of any of his functions under any enactment;
  - (i) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
  - (j) for the purposes of any civil proceedings brought under or by virtue of this Act, any of the other consolidation Acts, the <sup>M77</sup>Water Act 1989 [<sup>F566</sup>, the Water Act 2003][<sup>F567</sup>, the Water Act 2014] or any of the enactments or instruments specified in Part II of Schedule 24 to this Act, or of any arbitration under this Act, any of the other consolidation Acts [<sup>F568</sup>, the Water Act 1989 [<sup>F569</sup>, the Water Act 2003 or the Water Act 2014]]; or
  - (k) in pursuance of [<sup>F258</sup>an][<sup>F258</sup>EU] obligation.
- (3) Nothing in subsection (1) above shall be construed—
- (a) as limiting the matters which may be included in, or made public as part of, a report of—
    - (i) the [<sup>F570</sup>Agency];
    - [<sup>F571</sup>(ia) the Scottish Environment Protection Agency;]
    - [<sup>F572</sup>(ib) the NRBW;]
    - [<sup>F573</sup>(ii) the Water Services Regulation Authority;]
    - [<sup>F574</sup>(iii) the Consumer Council for Water (or any regional committee of that Council established under section 27A of the Water Industry Act 1991); or]
    - (iv) the [<sup>F575</sup>Competition and Markets Authority],
 under any provision of this Act [<sup>F576</sup>, Part I or IIA of the Environmental Protection Act 1990, that Act of 1991 [<sup>F577</sup>, the 1995 Act [<sup>F578</sup>, regulations under section 2 of the Pollution Prevention and Control Act 1999, or the Water Act 2003]]];

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- (b) as limiting the matters which may be published under section 201 of that Act [<sup>F579</sup>of 1991]; or
  - (c) as applying to any information which has been made public as part of such a report or has been so published or to any information exclusively of a statistical nature.
- (4) Subject to subsection (5) below, nothing in subsection (1) above shall preclude the disclosure of information—
- (a) if the disclosure is of information relating to a matter connected with the carrying out of the functions of a water undertaker or sewerage undertaker [<sup>F580</sup>, or with the carrying on by [<sup>F581</sup>a person] holding a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 of activities under [<sup>F582</sup>the person's licence],] and is made by one Minister of the Crown or government department to another; or
  - (b) if the disclosure is for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this section by an order made by the Secretary of State to discharge any functions which are specified in the order.
- (5) The power to make an order under subsection (4) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and where such an order designates an authority for the purposes of paragraph (b) of that subsection, the order may—
- (a) impose conditions subject to which the disclosure of information is permitted by virtue of that paragraph; and
  - (b) otherwise restrict the circumstances in which disclosure is so permitted.
- (6) Any person who discloses any information in contravention of the preceding provisions of this section shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (7) In this section “the other consolidation Acts” means the <sup>M78</sup>Water Industry Act 1991, <sup>F583</sup>... the <sup>M79</sup>Land Drainage Act 1991 and the <sup>M80</sup>Water Consolidation (Consequential Provisions) Act 1991.
- [<sup>F584</sup>(8) In this section the reference to the Bank of England does not include the Bank acting in its capacity as the Prudential Regulation Authority.]

#### Textual Amendments

- F258** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011](#) (S.I. 2011/1043), arts. 2, 3, 6 (with art. 3(2)(3), 4(2), 6(4)(5))
- F548** Words in s. 204(2)(a) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013](#) (S.I. 2013/755), art. 1(2), **Sch. 2 para. 300(2)(a)** (with Sch. 7)
- F549** Words in s. 204(2)(a) substituted (1.10.2005) by [Water Act 2003](#) (c. 37), s. 105(3), **Sch. 7 para. 28(3)(a)(i)**; S.I. 2005/2714, art. 2(1)(aa)(vi) (with Sch. para. 8)
- F550** Words in s. 204(2)(a) substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013](#) (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 96** (with art. 3)
- F551** Words in s. 204(2)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 173(2)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

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- F552** Words in s. 204(2)(a) substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 300(2)(b)** (with Sch. 7)
- F553** Words in s. 204(2)(a) inserted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **7(a)**
- F554** Words in s. 204(2)(b) substituted (1.12.2005) by Water Act 2003 (c. 37), s. 105(3), **Sch. 8 para. 53(3)(a)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F555** Word in s. 204(2)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 126(2)(a)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F556** Words in s. 204(2)(b) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 126(2)(b)**; S.I. 2016/465, art. 2(m), Sch. 1 para. 1(cc) (with Sch. 2)
- F557** Words in s. 204(2)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(3)(a)(iii)**; S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)
- F558** Words in s. 204(2)(b) substituted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **7(b)**
- F559** Words in s. 204(2)(c) substituted (1.12.2005) by Water Act 2003 (c. 37), s. 105(3), **Sch. 8 para. 53(3)(b)**; S.I. 2005/2714, art. 3(c) (with Sch. para. 8)
- F560** Words in s. 204(2)(c) substituted (1.10.2005) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(3)(a)(iv)**; S.I. 2005/2714, art. 2(l)(aa)(vi) (with Sch. para. 8)
- F561** S. 204(2)(ca) inserted (1.4.2011) by Flood and Water Management Act 2010 (c. 29), s. 49(3), **Sch. 2 para. 48** (with s. 49(1)(6)); S.I. 2011/694, art. 3(g)
- F562** S. 204(2)(e)(ea) substituted for s. 204(2)(e) (1.12.2001) by S.I. 2001/3649, **art. 329**
- F563** Words in s. 204(2)(e) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 73** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F564** Words in s. 204(2)(g) omitted (1.4.2008) by virtue of Legislative Reform (Health and Safety Executive) Order 2008 (S.I. 2008/960), art. 1, **Sch. 3** (with art. 21, Sch. 2)
- F565** S. 204(2)(ga) inserted (1.4.2014) by Energy Act 2013 (c. 32), s. 156(1), **Sch. 12 para. 65**; S.I. 2014/251, art. 4
- F566** Words in s. 204(2)(j) inserted (1.4.2004) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(3)(a)(v)**(a); S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)
- F567** Words in s. 204(2)(j) inserted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **7(c)(i)**
- F568** Words in s. 204(2)(j) substituted (1.4.2004) by Water Act 2003 (c. 37), s. 105(3), Sch. 7 para. 28(3)(a)(v)(b); S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)
- F569** Words in s. 204(2)(j) substituted (31.3.2017) by The Water Act 2014 (Consequential Amendments etc.) Order 2017 (S.I. 2017/506), arts. 1(1), **7(c)(ii)**
- F570** Words in s. 204 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F571** S. 204(3)(a)(ia) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 173(3)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F572** S. 204(3)(a)(ib) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 300(3)** (with Sch. 7)
- F573** S. 204(3)(a)(ii) substituted (1.4.2006) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(3)(b)(i)**; S.I. 2005/2714, art. 4(f) (with Sch. para. 8)
- F574** S. 204(3)(a)(iii) substituted (1.10.2005) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(3)(b)(ii)**; S.I. 2005/2714, art. 2(l)(aa)(vi) (with Sch. para. 8)
- F575** Words in s. 204(3)(a) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 96** (with art. 3)
- F576** Words in s. 204(3)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 173(3)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F577** Words in s. 204(3)(a) substituted (21.3.2000) by 1999 c. 24, s. 6, **Sch. 2 para. 8**; S.I. 2000/800, **art. 2**
- F578** Words in s. 204(3)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(3)(b)(iii)**; S.I. 2004/641, art. 3(y), Sch. 2 (with Sch. 3 para. 7)



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- F579** Words in s. 204(3)(b) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 173(4)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F580** Words in s. 204(4)(a) inserted (1.4.2004) by Water Act 2003 (c. 37), s. 105(3), **Sch. 8 para. 53(3)(c)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2** (with **Sch. 3 para. 7**)
- F581** Words in s. 204(4)(a) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 126(3)(a)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(cc)** (with **Sch. 2**)
- F582** Words in s. 204(4)(a) substituted (1.4.2016) by Water Act 2014 (c. 21), s. 94(3), **Sch. 7 para. 126(3)(b)**; S.I. 2016/465, **art. 2(m)**, **Sch. 1 para. 1(cc)** (with **Sch. 2**)
- F583** Words in s. 204(7) omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(3)(r), **Sch. 23 para. 28(5)**
- F584** S. 204(8) inserted (1.3.2017) by The Bank of England and Financial Services (Consequential Amendments) Regulations 2017 (S.I. 2017/80), reg. 1, **Sch. para. 6**

#### Modifications etc. (not altering text)

- C180** S. 204 applied (01.12.1991) by Land Drainage Act 1991 (c. 59, SIF 73:1), **ss. 70, 76(2)**.
- C181** S. 204 restricted (31.10.2003) by Railways and Transport Safety Act 2003 (c. 20), **s. 115**; S.I. 2003/2681, **art. 2(b)**
- C182** S. 204(2): disclosure powers extended (14.12.2001) by 2001 c. 24, s. 17, **Sch. 4 Pt.I para. 32**

#### Marginal Citations

- M75** 1986 c. 45.  
**M76** 1974 c. 37.  
**M77** 1989 c. 15.  
**M78** 1991 c. 56.  
**M79** 1991 c. 59.  
**M80** 1991 c. 60.

## 205 Confidentiality of information relating to underground water etc.

- (1) The person sinking any such well or borehole as is mentioned in section 198 above or, if it is a different person, the owner or occupier of the land on which any such well or borehole is sunk may by notice to [<sup>F585</sup>United Kingdom Research and Innovation (“UKRI”)] require [<sup>F586</sup>UKRI] to treat as confidential—
- any copy of or extract from the journal required to be kept under that section; or
  - any specimen taken in exercise of the rights specified in subsection (5) of that section.
- (2) Subject to subsections (3) and (4) below, [<sup>F587</sup>UKRI] shall not, without the consent of the person giving the notice, allow any matter to which any notice under subsection (1) above relates to be published or shown to any person who is not an officer of [<sup>F588</sup>UKRI] or of a department of the Secretary of State.
- (3) Subsection (2) above shall not prohibit any matter from being published or shown to any person in so far as it contains or affords information as to water resources and supplies.
- (4) If at any time [<sup>F589</sup>UKRI] give notice to any person that in their opinion his consent for the purposes of subsection (2) above is being unreasonably withheld—
- that person may, within three months after the giving of the notice, appeal to the High Court for an order restraining [<sup>F590</sup>UKRI] from acting as if consent had been given; and

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- (b) [<sup>F590</sup>UKRI] may proceed as if consent had been given if either no such appeal is brought within that period or the High Court, after hearing the appeal, do not make such an order.
- (5) Any person who fails to comply with any obligation imposed on him by the preceding provisions of this section shall be guilty of an offence and liable, on summary conviction—
- (a) to a fine not exceeding level 3 on the standard scale; and
- (b) where the offence continues after conviction, to a further fine of £20 for every day during which it so continues.
- (6) If any person who is admitted to any premises in compliance with section 198(2)(c) above discloses to any person any information obtained by him there with regard to any manufacturing process or trade secret, he shall, unless the disclosure is in performance of his duty, 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 the statutory maximum or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding three months or to a fine or to both.

#### Textual Amendments

- F585** Words in s. 205(1) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 12 para. 15\(3\)\(a\)\(i\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)
- F586** Word in s. 205(1) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 12 para. 15\(3\)\(a\)\(ii\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)
- F587** Word in s. 205(2) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 12 para. 15\(3\)\(b\)\(i\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)
- F588** Word in s. 205(2) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 12 para. 15\(3\)\(b\)\(ii\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)
- F589** Word in s. 205(4) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 12 para. 15\(3\)\(b\)\(i\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)
- F590** Word in s. 205(4) substituted (1.4.2018) by [Higher Education and Research Act 2017 \(c. 29\)](#), s. 124(5), [Sch. 12 para. 15\(3\)\(b\)\(ii\)](#); S.I. 2018/241, reg. 2(t) (with transitional and savings provisions in S.I. 2018/245, regs. 2, 3, 30)

#### *Making of false statements etc.*

### 206 Making of false statements etc.

- [<sup>F591</sup>(1) If, in furnishing any information or making any application under or for the purposes of any provision of this Act [<sup>F592</sup>or of section 3, 4 or 10 of the Water Act 2003 ], any person makes a statement which he knows to be false or misleading in a material particular, or recklessly makes any statement which is false or misleading in a material particular, he shall be guilty of an offence under this section.]

*Status: Point in time view as at 17/09/2018.*

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<sup>F593</sup>(2) .....

(3) Where—

(a) the provisions contained in a licence under Chapter II of Part II of this Act in pursuance of paragraph (b) of subsection (2) of section 46 above, or of that paragraph as modified by subsection (6) of that section, require the use of a meter, gauge or other device; and

(b) such a device is used for the purposes of those provisions, any person who wilfully alters or interferes with that device so as to prevent it from measuring correctly shall be guilty of an offence under this section.

[<sup>F594</sup>(3A) If a person intentionally makes a false entry in any record required to be kept by virtue of a licence under Chapter II of Part II of this Act, or a consent under Chapter II of Part III of this Act, he shall be guilty of an offence under this section.]

(4) If, in keeping any record or journal or in furnishing any information which he is required to keep or furnish under section 198 or 205 above, any person knowingly or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence under this section.

[<sup>F595</sup>(5) A person who is guilty of an offence under this section shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.]

#### Textual Amendments

**F591** S. 206(1) substituted (1.4.1996) by 1995 c. 25, s. 112, **Sch. 19 para. 5(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

**F592** Words in s. 206(1) inserted (1.4.2006) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 11**; S.I. 2006/984, **art. 2(s)(i)**

**F593** S. 206(2) repealed (1.4.1996) by 1995 c. 25, ss. 112, 125(2), **Sch. 19 para. 5(3)**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

**F594** S. 206(3A) inserted (1.4.1996) by 1995 c. 25, s. 112, **Sch. 19 para. 5(4)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

**F595** S. 206(5) substituted for s. 206(5)-(7) (1.4.1996) by 1995 c. 25, s. 112, **Sch. 19 para. 5(5)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

## PART IX

### MISCELLANEOUS AND SUPPLEMENTAL

#### *Miscellaneous*

#### **207 Directions in the interests of national security etc.**

(1) The Secretary of State may, after consultation with the [<sup>F596</sup>appropriate agency], give to the [<sup>F596</sup>appropriate agency] such directions of a general character as appear to the Secretary of State to be requisite or expedient in the interests of national security or for the purpose of mitigating the effects of any civil emergency which may occur.

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- (2) If it appears to the Secretary of State to be requisite or expedient to do so in the interests of national security or for the purpose of mitigating the effects of any civil emergency which has occurred or may occur, he may, after consultation with the [<sup>F596</sup>appropriate agency], give to the [<sup>F596</sup>appropriate agency] a direction requiring it to do, or not to do, a particular thing specified in the direction.
- (3) The duty of the [<sup>F596</sup>appropriate agency] to comply with a direction under this section is a duty which has effect notwithstanding any other duty imposed on it (whether or not by or under this Act).
- (4) The Secretary of State shall lay before each House of Parliament a copy of every direction given under this section unless he is of the opinion that disclosure of the direction is against the interests of national security.
- (5) A person shall not disclose, or be required by virtue of any enactment or otherwise to disclose, anything done by virtue of this section if the Secretary of State has notified him that the Secretary of State is of the opinion that disclosure of that thing is against the interests of national security.
- (6) Any person who discloses any matter in contravention of subsection (5) above shall be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (7) Any reference in this section to a civil emergency is a reference to any natural disaster or other emergency which, in the opinion of the Secretary of State, is or may be likely, in relation to any area—
  - (a) so to disrupt water supplies or sewerage services; or
  - (b) to involve such destruction of or damage to life or property in that area, as seriously and adversely to affect all the inhabitants of that area, or a substantial number of them, whether by depriving them of any of the essentials of life or otherwise.
- (8) In this section “sewerage services” has the same meaning as in the <sup>M81</sup>Water Industry Act 1991.

#### Textual Amendments

**F596** Words in s. 207 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 301](#) (with [Sch. 7](#))

#### Marginal Citations

**M81** 1991 c. 56.

## 208 [<sup>F597</sup>Civil liability of the Agency or NRBW for escapes of water etc]

- (1) Where an escape of water, however caused, from a pipe vested in the Agency [<sup>F598</sup>or the NRBW] causes loss or damage, the Agency [<sup>F599</sup>or, as the case may be, the NRBW,] shall be liable, except as otherwise provided in this section, for the loss or damage.
- (2) The Agency [<sup>F600</sup>or the NRBW] shall not incur any liability under subsection (1) above if the escape was due wholly to the fault of the person who sustained the loss or damage or of any servant, agent or contractor of his.

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- (3) The Agency [<sup>F601</sup>or the NRBW] shall not incur any liability under subsection (1) above in respect of any loss or damage for which the Agency [<sup>F601</sup>or the NRBW] would not be liable apart from that subsection and which is sustained—
- (a) by any water undertaker or sewerage undertaker or by any statutory undertakers, within the meaning of section 336(1) of the <sup>M82</sup>Town and Country Planning Act 1990;
  - (b) by any public gas supplier within the meaning of Part I of the <sup>M83</sup>Gas Act 1986 or the holder of a licence under section 6(1) of the <sup>M84</sup>Electricity Act 1989;
  - (c) by any highway authority; or
  - (d) by any person on whom a right to compensation is conferred by section 82 of the <sup>M85</sup>New Roads and Street Works Act 1991.
- (4) The <sup>M86</sup>Law Reform (Contributory Negligence) Act 1945, the <sup>M87</sup>Fatal Accidents Act 1976 and the <sup>M88</sup>Limitation Act 1980 shall apply in relation to any loss or damage for which the Agency [<sup>F602</sup>or the NRBW] is liable under this section, but which is not due to the Agency's [<sup>F603</sup>or the NRBW's] fault, as if it were due to its fault.
- (5) Nothing in subsection (1) above affects any entitlement which the Agency [<sup>F604</sup>or the NRBW] may have to recover contribution under the <sup>M89</sup>Civil Liability (Contribution) Act 1978; and for the purposes of that Act, any loss for which the Agency [<sup>F604</sup>or the NRBW] is liable under that subsection shall be treated as if it were damage.
- (6) Where the Agency [<sup>F605</sup>or the NRBW] is liable under any enactment or agreement passed or made before 1st April 1982 to make any payment in respect of any loss or damage the Agency [<sup>F605</sup>or the NRBW] shall not incur liability under subsection (1) above in respect of the same loss or damage.
- (7) In this section “fault” has the same meaning as in the <sup>M90</sup>Law Reform (Contributory Negligence) Act 1945.
- (8) Until the coming into force of section 82 of the <sup>M91</sup>New Roads and Street Works Act 1991, subsection (3) above shall have effect as if for paragraph (d) there were substituted the following paragraphs—
- “(d) by any bridge authority, bridge managers, street authority or street managers within the meaning of the <sup>M92</sup>Public Utilities Street Works Act 1950; or
  - (e) by any person on whom a right to compensation under section 26 of that Act of 1950 is conferred.”;but nothing in this section shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing section 82 of that Act into force on different days for different purposes (including the purposes of this section).

#### Textual Amendments

**F597** S. 208 heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 302(6)** (with Sch. 7)

**F598** Words in s. 208(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 302(2)(a)** (with Sch. 7)

**F599** Words in s. 208(1) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 302(2)(b)** (with Sch. 7)

**F600** Words in s. 208(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 302(3)** (with Sch. 7)

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- F601** Words in s. 208(3) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 302(3)** (with Sch. 7)
- F602** Words in s. 208(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 302(4)(a)** (with Sch. 7)
- F603** Words in s. 208(4) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 302(4)(b)** (with Sch. 7)
- F604** Words in s. 208(5) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 302(5)** (with Sch. 7)
- F605** Words in s. 208(6) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 302(5)** (with Sch. 7)

#### Modifications etc. (not altering text)

- C183** S. 208(3)(b) amended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(2)(n)**; S.I. 1996/218, **art. 2**

#### Marginal Citations

- M82** 1990 c. 8.  
**M83** 1986 c. 44.  
**M84** 1989 c. 29.  
**M85** 1991 c. 22.  
**M86** 1945 c. 28.  
**M87** 1976 c. 30.  
**M88** 1980 c. 58.  
**M89** 1978 c. 47.  
**M90** 1945 c. 28.  
**M91** 1991 c. 22.  
**M92** 1950 c. 39.

## 209 Evidence of samples and abstractions.

**F606**(1) . . . . .

**F606**(2) . . . . .

(3) Where, in accordance with the provisions contained in a licence in pursuance of paragraph (b) of subsection (2) of section 46 above, or in pursuance of that paragraph as read with subsection (6) of that section, it has been determined what quantity of water is to be taken—

- (a) to have been abstracted during any period from a source of supply by the holder of the licence; or
- (b) to have been so abstracted at a particular point or by particular means, or for use for particular purposes,

that determination shall, for the purposes of any proceedings under Chapter II of Part II of this Act or any of the related water resources provisions, be conclusive evidence of the matters to which it relates.

**F606**(4) . . . . .

#### Textual Amendments

- F606** S. 209(1)(2)(4) repealed (1.4.1996) by 1995 c. 25, ss. 111(1)(c), 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

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## Byelaws

### 210 Byelaw-making powers of the [<sup>F607</sup> appropriate agency].

- (1) Schedule 25 to this Act shall have effect for conferring powers on the [<sup>F608</sup> appropriate agency] to make byelaws for purposes connected with the carrying out of its functions.
- (2) Schedule 26 to this Act shall have effect in relation to byelaws made by the [<sup>F608</sup> appropriate agency], whether by virtue of subsection (1) above or by virtue of any other enactment.

[<sup>F609</sup>(3) Schedule 27 to this Act (emergency fisheries byelaws) shall have effect.]

#### Textual Amendments

- F607** Words in s. 210 heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 303** (with Sch. 7)
- F608** Words in ss. 210-216 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 303** (with Sch. 7)
- F609** S. 210(3) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 225(1)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 14

### 211 Enforcement of byelaws.

- (1) If any person contravenes any byelaws made by virtue of paragraph 1 of Schedule 25 to this Act, he shall be guilty of an offence and liable, on summary conviction—
  - (a) to a fine not exceeding level 1 on the standard scale; and
  - (b) if the contravention is continued after conviction, to a fine not exceeding £5 for each day on which it is so continued.
- (2) Byelaws made by virtue of paragraph 2 or 3 of that Schedule may contain provision providing for a contravention of the byelaws to constitute a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be specified in the byelaws.
- (3) A person who contravenes any byelaws made by virtue of paragraph 4 or 6 of that Schedule shall be guilty of an offence and liable, on summary conviction,
  - [<sup>F610</sup>(a) in the case of byelaws made by virtue of paragraph 4, to a fine not exceeding level 4 on the standard scale or such smaller sum as may be specified in the byelaws;
  - (b) in the case of byelaws made by virtue of paragraph 6, to [<sup>F611</sup>a fine].]
- (4) If any person acts in contravention of any byelaw made by virtue of paragraph 5 of that Schedule he shall be guilty of an offence and liable, on summary conviction—
  - (a) to a fine not exceeding level 5 on the standard scale; and
  - (b) if the contravention is continued after conviction, to a further fine not exceeding £40 for each day on which it is so continued.
- (5) Without prejudice to any proceedings by virtue of subsection (1) or (4) above, the [<sup>F608</sup> appropriate agency] may—

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- (a) take such action as it considers necessary to remedy the effect of any contravention of byelaws made by virtue of paragraph 1 of Schedule 25 to this Act;
  - (b) take such action as may be necessary to remedy the effect of any person's contravention of byelaws made by virtue of paragraph 5 of that Schedule; and
  - (c) recover the expenses reasonably incurred by the [F608 appropriate agency] in taking any action under paragraph (a) or (b) above from the person in default.
- (6) So much of the M93 Salmon and Freshwater Fisheries Act 1975 as makes provision with respect to or by reference to offences under that Act shall have effect as if an offence consisting in a contravention of byelaws made by virtue of paragraph 6 of Schedule 25 to this Act were an offence under that Act.
- (7) Section 70 above shall apply in relation to any restrictions imposed by byelaws made by virtue of paragraph 1 of Schedule 25 to this Act as it applies in relation to restrictions imposed by the provisions of Chapter II of Part II of this Act which are mentioned in that section; and sections 100 and 101 above shall have effect in relation to contraventions of byelaws made by virtue of paragraph 4 of that Schedule as they have effect in relation to contraventions of provisions of Part III of this Act.

#### Textual Amendments

**F608** Words in ss. 210-216 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 303** (with Sch. 7)

**F610** S. 211(3)(a)(b) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 226, 324(3)**; S.I. 2009/3345, art. 2, Sch. para. 14

**F611** Words in s. 211(3)(b) substituted (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), **Sch. 4 para. 24(6)** (with reg. 5(1))

#### Modifications etc. (not altering text)

**C184** S. 211 excluded (1.7.1999) by S.I. 1999/1746, **art. 4(1)**; S.I. 1998/3178, **art. 3**

#### Marginal Citations

**M93** 1975 c. 51.

## 212 Compensation in respect of certain fisheries byelaws.

- (1) Where—
- (a) the owner or occupier of any fishery by notice to the [F608 appropriate agency] claims that the fishery is injuriously affected by a byelaw made for any of the purposes specified in subsection (2) below; and
  - (b) that claim is made at any time before the end of twelve months after the confirmation of the byelaw,
- [F612 the [F608 appropriate agency] may pay that person such amount by way of compensation as it considers appropriate. ]
- (2) The purposes mentioned in subsection (1)(a) above are the following purposes specified in paragraph 6(2) of Schedule 25 to this Act, that is to say—



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- (a) prohibiting the use for taking [<sup>F613</sup>any fish to which paragraph 6 of that Schedule applies] of any instrument <sup>F614</sup>... in such waters and at such times as are prescribed by the byelaw;
- (b) specifying the nets and other instruments <sup>F615</sup>... which may be used for taking [<sup>F616</sup>any such fish] and imposing requirements as to the use of such nets and other instruments;
- (c) imposing requirements as to the construction, design, material and dimensions of any such nets or instruments, including in the case of nets the size of mesh.

<sup>F617</sup>(3) .....

- (4) Expressions used in this section and in the Salmon and Freshwater Fisheries Act 1975 have the same meanings in this section as in that Act.

**Textual Amendments**

- F608** Words in ss. 210-216 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 303** (with Sch. 7)
- F612** Words in s. 212(1) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), ss. **227(2)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 14
- F613** Words in s. 212(2)(a) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), **Sch. 16 para. 23(2)(a)(i)**; S.I. 2009/3345, art. 2, Sch. para. 15(i)
- F614** Words in s. 212(2)(a) repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), Sch. 16 para. 23(2)(a)(ii), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 15(i), 27(b)
- F615** Words in s. 212(2)(b) repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), Sch. 16 para. 23(2)(b)(i), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 15(i), 27(b)
- F616** Words in s. 212(2)(b) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(3), **Sch. 16 para. 23(2)(b)(ii)**; S.I. 2009/3345, art. 2, Sch. para. 15(i)
- F617** S. 212(3) repealed (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), ss. 227(3), 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 14, 27(b)

*Local inquiries*

<sup>F618</sup>**213** .....

**Textual Amendments**

- F618** S. 213 repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), Sch. 22 para. 174, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

<sup>F619</sup>**214** .....

**Textual Amendments**

- F619** S. 214 repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), Sch. 22 para. 174, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

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**F620** 215 .....

**Textual Amendments**

**F620** S. 215 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 174, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

*Offences etc.*

**216 Enforcement: powers and duties.**

- (1) Without prejudice to its powers of enforcement in relation to the other provisions of this Act, it shall be the duty of the [<sup>F608</sup>appropriate agency] to enforce the provisions to which this section applies.
- (2) No proceedings for any offence under any provision to which this section applies shall be instituted except—
  - (a) by the [<sup>F608</sup>appropriate agency]; or
  - (b) by, or with the consent of, the Director of Public Prosecutions.
- (3) This section applies to Chapter II of Part II of this Act and the related water resources provisions.

**Textual Amendments**

**F608** Words in ss. 210-216 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 303** (with Sch. 7)

**Modifications etc. (not altering text)**

**C185** S. 216 applied (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 33(3)(d)**, 105(3); S.I. 2006/984, art. 2(p)

**217 Criminal liabilities of directors and other third parties.**

- (1) Where a body corporate is guilty of an offence under this Act [<sup>F621</sup>or under section 4 of the Water Act 2003 ] and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, then he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.
- (3) Without prejudice to subsections (1) and (2) above, where the commission by any person of an offence under the water pollution provisions of this Act is due to the act or default of some other person, that other person may be charged with and convicted of the offence whether or not proceedings for the offence are taken against the first-mentioned person.

*Status: Point in time view as at 17/09/2018.*

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**Textual Amendments**

**F621** Words in s. 217(1) inserted (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), [Sch. 7 para. 12](#); [S.I. 2006/984](#), art. 2(s)(i)

*Judicial disqualification*

**F622** 218 .....

**Textual Amendments**

**F622** S. 218 repealed (1.4.1996) by [1995 c. 25](#), s. 120(1)(3), [Sch. 22 para. 175](#), [Sch. 24](#) (with ss. 7(6), 115, 117); [S.I. 1996/186](#), [art. 3](#) (with [art. 4](#))

*Powers to make regulations*

**219 Powers to make regulations.**

- (1) Any power of one or both of the Ministers to make regulations under any provision of this Act shall be exercisable by statutory instrument subject (except in the case of regulations made by virtue of paragraph 1(3) of Schedule 15 to this Act) to annulment in pursuance of a resolution of either House of Parliament.
- (2) <sup>F623</sup> . . . The provisions of any regulations made by one or both the Ministers under this Act may include-
  - (a) provision for any duty or other requirement imposed by the regulations on a water undertaker or sewerage undertaker to be enforceable under section 18 of the <sup>M94</sup>Water Industry Act 1991 by the Secretary of State, by [<sup>F624</sup> the Water Services Regulation Authority ] or by either of them;
  - (b) provision, where such a duty or requirement is so enforceable by either of them, for enforcement by [<sup>F625</sup> the Water Services Regulation Authority ] to be subject to such consent or authorisation as may be prescribed;
  - (c) provision which, in relation to the furnishing of any information or the making of any application under the regulations, makes provision corresponding to section 206(1) and (5) above;
  - (d) provision for anything that may be prescribed by the regulations to be determined under the regulations and for anything falling to be so determined to be determined by such persons, in accordance with such procedure and by reference to such matters, and to the opinion of such persons, as may be prescribed;
  - (e) different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (f) such supplemental, consequential and transitional provision as the Minister or Ministers exercising the power considers or consider appropriate.

<sup>F626</sup>(3) .....

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#### Textual Amendments

- F623** Words in s. 219(2) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 176(a), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F624** Words in s. 219(2)(a) substituted (1.4.2006) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(4)**; S.I. 2005/2714, art. 4(f) (with Sch. para. 8)
- F625** Words in s. 219(2)(b) substituted (1.4.2006) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(4)**; S.I. 2005/2714, art. 4(f) (with Sch. para. 8)
- F626** S. 219(3) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 176(b), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### Marginal Citations

- M94** 1991 c. 56.

### *Construction of Act*

#### **220 Provisions relating to service of documents.**

- (1) Any document required or authorised by virtue of this Act to be served on any person may be served—
  - (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address; or
  - (b) if the person is a body corporate, by serving it in accordance with paragraph (a) above on the secretary or clerk of that body; or
  - (c) if the person is a partnership, by serving it in accordance with paragraph (a) above on a partner or a person having the control or management of the partnership business.
- (2) For the purposes of this section and section 7 of the <sup>M95</sup>Interpretation Act 1978 (which relates to the service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served shall be his last known address, except that—
  - (a) in the case of service on a body corporate or its secretary or clerk, it shall be the address of the registered or principal office of the body;
  - (b) in the case of service on a partnership or a partner or a person having the control or management of a partnership business, it shall be the address of the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom, or of a partnership carrying on business outside the United Kingdom, is its principal office within the United Kingdom.
- (3) If a person to be served by virtue of this Act with any document by another has specified to that other an address within the United Kingdom other than his proper address (as determined in pursuance of subsection (2) above) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated as his proper address for the purposes of this section and for the purposes of the said section 7 in its application to this section.
- (4) Where under any provision of this Act any document is required to be served on the owner, on a lessee or on the occupier of any premises then—

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- (a) if the name or address of the owner, of the lessee or, as the case may be, of the occupier of the premises cannot after reasonable inquiry be ascertained; or
- (b) in the case of service on the occupier, if the premises appear to be or are unoccupied,

that document may be served either by leaving it in the hands of a person who is or appears to be resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land.

- (5) This section shall not apply to any document in relation to the service of which provision is made by rules of court.

**Modifications etc. (not altering text)**

C186 S. 220 applied (21.7.1994) by 1994 c. xiii, s. 29(4)

C187 S. 220 applied (1.4.2006) by Water Act 2003 (c. 37), ss. 33(4), 105(3); S.I. 2006/984, art. 2(p)

**Marginal Citations**

M95 1978 c. 30.

**221 General interpretation.**

- (1) In this Act, except in so far as the context otherwise requires—

[<sup>F627</sup>“the 1995 Act” means the Environment Act 1995;]

“abstraction”, in relation to water contained in any source of supply, means the doing of anything whereby any of that water is removed from that source of supply, whether temporarily or permanently, including anything whereby the water is so removed for the purpose of being transferred to another source of supply; and “abstract” shall be construed accordingly;

“accessories”, in relation to a main, sewer or other pipe, includes any manholes, ventilating shafts, inspection chambers, settling tanks, wash-out pipes, pumps, ferrules or stopcocks for the main, sewer or other pipe, or any machinery or other apparatus which is designed or adapted for use in connection with the use or maintenance of the main, sewer or other pipe or of another accessory for it, but does not include any [<sup>F628</sup>electronic communications apparatus] unless it—

- (a) is or is to be situated inside or in the close vicinity of the main, sewer or other pipe or inside or in the close vicinity of another accessory for it; and
- (b) is intended to be used only in connection with the use or maintenance of the main, sewer or other pipe or of another accessory for it;

and in this definition “stopcock” has the same meaning as in the <sup>M96</sup>Water Industry Act 1991;

[<sup>F629</sup>“the Agency” means the Environment Agency;]

“agriculture” has the same meaning as in the <sup>M97</sup>Agriculture Act 1947 and “agricultural” shall be construed accordingly;

“analyse”, in relation to any sample of land, water or effluent, includes subjecting the sample to a test of any description, and cognate expressions shall be construed accordingly;

[<sup>F630</sup>“the appropriate agency” means—

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- (a) for the purposes of the flood risk management work provisions—
  - (i) in relation to flood risks (within the meaning of the Flood and Water Management Act 2010) in Wales, the NRBW;
  - (ii) in any other case, the Agency;
- (b) for any other purpose—
  - (i) in relation to Wales, the NRBW;
  - (ii) in any other case, the Agency;]

F631

“conservancy authority” means any person who has a duty or power under any enactment to conserve, maintain or improve the navigation of a tidal water and is not a navigation authority or harbour authority;

F632

“contravention” includes a failure to comply, and cognate expressions shall be construed accordingly;

“damage”, in relation to individuals, includes death and any personal injury (including any disease or impairment of physical or mental condition);

“discrete waters” means inland waters so far as they comprise—

- (a) a lake, pond or reservoir which does not discharge to any other inland waters; or
- (b) one of a group of two or more lakes, ponds or reservoirs (whether near to or distant from each other) and of watercourses or mains connecting them, where none of the inland waters in the group discharges to any inland waters outside the group;

“disposal”—

- (a) in relation to land or any interest or right in or over land, includes the creation of such an interest or right and a disposal effected by means of the surrender or other termination of any such interest or right; and
- (b) in relation to sewage, includes treatment;

and cognate expressions shall be construed accordingly;

“drain” has, subject to subsection (2) below, the same meaning as in the <sup>M98</sup>Water Industry Act 1991;

“drainage” in the expression “drainage works” has the meaning given by section 113 above for the purposes of Part IV of this Act;

“drought order” means an ordinary drought order under subsection (1) of section 73 above or an emergency drought order under subsection (2) of that section;

“effluent” means any liquid, including particles of matter and other substances in suspension in the liquid;

“enactment” includes an enactment contained in this Act or in any Act passed after this Act;

F633

“engineering or building operations”, without prejudice to the generality of that expression, includes—

- (a) the construction, alteration, improvement, maintenance or demolition of any building or structure or of any reservoir, watercourse, dam, weir, well, borehole or other works; and
- (b) the installation, modification or removal of any machinery or apparatus;

“financial year” means the twelve months ending with 31st March;

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[<sup>F634</sup>“environmental permit” has the same meaning as in the Environmental Permitting Regulations;

“Environmental Permitting Regulations” means [<sup>F635</sup>the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154)];]

[<sup>F636</sup>“flood defence functions”, in relation to [<sup>F637</sup>the appropriate agency], means—

- (a) its functions with respect to flood defence and land drainage by virtue of Part IV of this Act, the <sup>M99</sup>Land Drainage Act 1991 and section 6 of the 1995 Act;
- (b) those functions [<sup>F638</sup>of the appropriate agency which were previously] transferred to the Agency by section 2(1)(a)(iii) of the 1995 Act which were previously transferred to the Authority by virtue of section 136(8) of the <sup>M100</sup>Water Act 1989 and paragraph 1(3) of Schedule 15 to that Act (transfer of land drainage functions under local statutory provisions and subordinate legislation); <sup>F639</sup> ...
- (c) any other functions of [<sup>F640</sup>the appropriate agency] under any of the flood defence provisions of this Act;]
- (d) [<sup>F641</sup>its functions with respect to securing the drainage of land or the management of flood risk contained in regulations made under section 61 of the Water Act 2014; and
- (e) any other function of the appropriate agency under any provision of this Act or the 1995 Act so far as it relates to a function falling within paragraph (d);]

[<sup>F642</sup>“flood defence provisions”, in relation to this Act, means—

- (a) any of the following provisions of this Act, that is to say—
  - (i) Part IV;
  - (ii) sections 133 to 141 (including Schedule 15), 143, <sup>F643</sup>... 155, 165 to 167, 180, 193, 194 and paragraph 5 of Schedule 25;
- (b) any of the following provisions of the 1995 Act, that is to say—
  - (i) section 6(4) (general supervision of flood defence); [<sup>F644</sup>and]
  - (ii) section 53 (inquiries and other hearings); and
  - (iii) <sup>F645</sup> ...
- (c) any other provision of this Act or the 1995 Act so far as it relates to a provision falling within paragraph (a) or (b) above;]

[<sup>F646</sup>“flood risk management work provisions” means—

- (a) sections 159(1A), 160(1A), 165 and 166; and
- (b) any other provision of Part 7 so far as it relates to a provision falling within paragraph (a);]

“harbour” has the same meaning for the purposes of the flood defence provisions of this Act as in [<sup>F647</sup>section 313 of the Merchant Shipping Act 1995];

“harbour authority” (except in the flood defence provisions of this Act, in which it has the same meaning as in [<sup>F648</sup>section 313 of the Merchant Shipping Act 1995]) means a person who is a harbour authority [<sup>F648</sup>as defined in section 151 for the purposes of Chapter II of Part VI of that Act] and is not a navigation authority;

“highway” has the same meaning as in the <sup>M101</sup>Highways Act 1980;

“information” includes anything contained in any records, accounts, estimates or returns;

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“inland waters” means the whole or any part of—

- (a) any river, stream or other watercourse (within the meaning of Chapter II of Part II of this Act), whether natural or artificial and whether tidal or not;
- (b) any lake or pond, whether natural or artificial, or any reservoir or dock, in so far as the lake, pond, reservoir or dock does not fall within paragraph (a) of this definition; and
- (c) so much of any channel, creek, bay, estuary or arm of the sea as does not fall within paragraph (a) or (b) of this definition;

“joint planning board” has the same meaning as in the <sup>M102</sup>Town and Country Planning Act 1990;

“local authority” means the council of any county, [<sup>F649</sup>county borough,] district or London borough or the Common Council of the City of London;

“local statutory provision” means—

- (a) a provision of a local Act (including an Act confirming a provisional order);
- (b) a provision of so much of any public general Act as has effect with respect to a particular area, with respect to particular persons or works or with respect to particular provisions falling within any paragraph of this definition;
- (c) a provision of an instrument made under any provision falling within paragraph (a) or (b) above; or
- (d) a provision of any other instrument which is in the nature of a local enactment;

“main river” means a main river within the meaning of Part IV of this Act;

[<sup>F650</sup>“the main river map for England” has the meaning given by section 193(2);

“the main river map for Wales” has the meaning given by section 194(2);]

“micro-organism” includes any microscopic, biological entity which is capable of replication;

“minimum acceptable flow”, in relation to any inland waters, means (except in sections 21 and 22 above and subject to section 23(3) above) the minimum acceptable flow as for the time being contained in provisions which are in force under section 21(7) above in relation to those waters;

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

“the Ministers” means the Secretary of State and the Minister;

“modifications” includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;

“mortgage” includes any charge or lien on any property for securing money or money’s worth, and “mortgagee” shall be construed accordingly;

“navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock;

“notice” means notice in writing;

[<sup>F651</sup>“the NRBW” means the Natural Resources Body for Wales;]

“owner”, in relation to any premises, means the person who—

- (a) is for the time being receiving the rack-rent of the premises, whether on his own account or as agent or trustee for another person; or



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(b) would receive the rack-rent if the premises were let at a rack-rent,

but for the purposes of Schedule 2 to this Act, Chapter II of Part II of this Act and the related water resources provisions does not include a mortgagee not in possession, and cognate expressions shall be construed accordingly;

“prescribed” means prescribed by regulations made by the Secretary of State or, in relation to regulations made by the Minister, by those regulations;

“public authority” means any Minister of the Crown or government department, the Agency, [<sup>F652</sup>the NRBW,] any local authority or any person certified by the Secretary of State to be a public authority for the purposes of this Act;

“public sewer” means a sewer for the time being vested in a sewerage undertaker in its capacity as such, whether vested in that undertaker by virtue of a scheme under Schedule 2 to the <sup>M103</sup>Water Act 1989, section 179 of or Schedule 2 to the <sup>M104</sup>Water Industry Act 1991 or otherwise;

“records” includes computer records and any other records kept otherwise than in a document;

[<sup>F653</sup>“the related water resources provisions”, in relation to Chapter II of Part II of this Act, means—

(a) the following provisions of this Act, that is to say, the provisions—

(i) of sections 21 to 23 (including Schedule 5);

(ii) of sections 120, 125 to 130, 158, 189, 199 to 201, 206(3), 209(3), 211(1) and 216; and

(iii) of paragraph 1 of Schedule 25; and

(b) the following provisions of the 1995 Act, that is to say, the provisions—

(i) of sections 41 and 42 (charging schemes) as they have effect by virtue of subsection (1)(a) of section 41 (licences under Chapter II of Part II of this Act); and

(ii) of subsections (1) [<sup>F654</sup>, (1A)] and (2) of section 53 (inquiries and other hearings);]

“sewage effluent” includes any effluent from the sewage disposal or sewerage works of a sewerage undertaker but does not include surface water;

“sewer” has, subject to subsection (2) below, the same meaning as in the Water Industry Act 1991;

“source of supply” means—

(a) any inland waters except, without prejudice to subsection (3) below in its application to paragraph (b) of this definition, any which are discrete waters; or

(b) any underground strata in which water is or at any time may be contained;

“street” has, subject to subsection (4) below, the same meaning as in Part III of the <sup>M105</sup>New Roads and Street Works 1991;

“subordinate legislation” has the same meaning as in the <sup>M106</sup>Interpretation Act 1978;

“substance” includes micro-organisms and any natural or artificial substance or other matter, whether it is in solid or liquid form or in the form of a gas or vapour;

“surface water” includes water from roofs;

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“trade effluent” includes any effluent which is discharged from premises used for carrying on any trade or industry, other than surface water and domestic sewage, and for the purposes of this definition any premises wholly or mainly used (whether for profit or not) for agricultural purposes or for the purposes of fish farming or for scientific research or experiment shall be deemed to be premises used for carrying on a trade;

“underground strata” means strata subjacent to the surface of any land;

“vessel” includes a hovercraft within the meaning of the <sup>M107</sup>Hovercraft Act 1968;

“watercourse” includes (subject to sections 72(2) [<sup>F655</sup>113(1), 193(6) and 194(6)] above) all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows, except mains and other pipes which—

- (a) belong to the Agency [<sup>F656</sup>, the NRBW,] or a water undertaker; or
- (b) are used by a water undertaker or any other person for the purpose only of providing a supply of water to any premises;

“water pollution provisions”, in relation to this Act, means the following provisions of this Act—

- (a) the provisions of Part III of this Act;
- (b) sections 161 [<sup>F657</sup>to 161D], 190, 202, [<sup>F658</sup>and 203] above; and
- (c) paragraph 4 of Schedule 25 to this Act and section 211 above so far as it relates to byelaws made under that paragraph.

[<sup>F659</sup>and the following provisions of the 1995 Act, that is to say, the provisions of subsections (1) [<sup>F660</sup>, (1A)] and (2) of section 53.]

[<sup>F661</sup>(1A) For the purposes of the definition of “the appropriate agency” in subsection (1), “Wales” has the meaning given by section 158 of the Government of Wales Act 2006.]

- (2) References in this Act to a pipe, including references to a main, a drain or a sewer, shall include references to a tunnel or conduit which serves or is to serve as the pipe in question and to any accessories for the pipe; and, accordingly, references to the laying of a pipe shall include references to the construction of such a tunnel or conduit, to the construction or installation of any such accessories and to the making of a connection between one pipe and another.
- (3) Any reference in this Act to water contained in underground strata is a reference to water so contained otherwise than in a sewer, pipe, reservoir, tank or other underground works constructed in any such strata; but for the purposes of this Act water for the time being contained in—
  - (a) a well, borehole or similar work, including any adit or passage constructed in connection with the well, borehole or work for facilitating the collection of water in the well, borehole or work; or
  - (b) any excavation into underground strata, where the level of water in the excavation depends wholly or mainly on water entering it from those strata, shall be treated as water contained in the underground strata into which the well, borehole or work was sunk or, as the case may be, the excavation was made.
- (4) Until the coming into force of Part III of the <sup>M108</sup>New Roads and Street Works Act 1991, the definition of “street” in subsection (1) above shall have effect as if the reference to that Part were a reference to the <sup>M109</sup>Public Utilities Street Works Act 1950; but nothing in this section shall be taken—

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- (a) to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing Part III of that Act into force on different days for different purposes (including the purposes of this section); or
  - (b) in the period before the coming into force of that Part, to prevent references in this Act to a street, where the street is a highway which passes over a bridge or through a tunnel, from including that bridge or tunnel.
- (5) For the purposes of any provision of this Act by or under which power is or may be conferred on any person to recover the expenses incurred by that person in doing anything, those expenses shall be assumed to include such sum as may be reasonable in respect of establishment charges or overheads.
- (6) References in this Act to the later or latest of two or more different times or days are, in a case where those times or days coincide, references to the time at which or, as the case may be, the day on which they coincide.
- (7) For the purposes of this Act—
- (a) references in this Act to more than one Minister of the Crown, in relation to anything falling to be done by those Ministers, are references to those Ministers acting jointly; and
  - (b) any provision of this Act by virtue of which any function of a Minister of the Crown is exercisable concurrently by different Ministers, shall have effect as providing for that function also to be exercisable jointly by any two or more of those Ministers.
- (8) Sub-paragraph (1) of paragraph 1 of Schedule 2 to the <sup>M110</sup>Water Consolidation (Consequential Provisions) Act 1991 has effect (by virtue of sub-paragraph (2)(b) of that paragraph) so that references in this Act to things done under or for the purposes of provisions of this Act, the <sup>M111</sup>Water Industry Act 1991 or the <sup>M112</sup>Land Drainage Act 1991 include references to things done, or treated as done, under or for the purposes of the corresponding provisions of the law in force before the commencement of this Act.
- (9) Subject to any provision to the contrary which is contained in Schedule 26 to the <sup>M113</sup>Water Act 1989 or in the <sup>M114</sup>Water Consolidation (Consequential Provisions) Act 1991, nothing in any local statutory provision passed or made before 1st September 1989 shall be construed as relieving any water undertaker or sewerage undertaker from any liability arising by virtue of this Act in respect of any act or omission occurring on or after that date.

#### Textual Amendments

- F627** Words in s. 221(1) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F628** Words in s. 221 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by **Communications Act 2003 (c. 21)**, s. 411(2), **Sch. 17 para. 113** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- F629** Words in s. 221(1) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F630** Words in s. 221 inserted (1.4.2013) by **The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755)**, art. 1(2), **Sch. 2 para. 304(2)** (with Sch. 7)
- F631** Words in s. 221(1) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 177(4)**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

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- F632** Words in s. 221(1) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 177(5), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F633** Words in s. 221 repealed (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), Sch. 26 para. 8(10)(b), **Sch. 28** (with reg. 1(2), Sch. 4)
- F634** Words in s. 221 inserted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 8(10)(a)** (with reg. 1(2), Sch. 4)
- F635** Words in s. 221(1) substituted (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 Pt. 1 para. 9** (with regs. 1(3), 77-79, Sch. 4)
- F636** Words in s. 221(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(7)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F637** Words in s. 221 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(3)(a)** (with Sch. 7)
- F638** Words in s. 221 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(3)(b)** (with Sch. 7)
- F639** Word in s. 221(1) omitted (6.4.2016) by virtue of The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016 (S.I. 2016/475), reg. 1(2), **Sch. 3 para. 2(a)** (with regs. 31-33)
- F640** Words in s. 221 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(3)(c)** (with Sch. 7)
- F641** Words in s. 221(1) inserted (6.4.2016) by The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2016 (S.I. 2016/475), reg. 1(2), **Sch. 3 para. 2(b)** (with regs. 31-33)
- F642** Words in s. 221(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(8)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F643** Words in s. 221(1) repealed (17.3.2004 for E., 1.4.2004 for W.) by Water Act 2003 (c. 37), ss. 69(4), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, art. 2(a)(d); S.I. 2004/910, art. 2(1)(b)
- F644** Word in s. 221(1) inserted (14.7.2014) by Water Act 2014 (c. 21), s. 94(2)(r), **Sch. 10 para. 13(a)**
- F645** Words in s. 221(1) repealed (14.7.2014) by Water Act 2014 (c. 21), s. 94(2)(r), **Sch. 10 para. 13(b)**
- F646** Words in s. 221 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(4)** (with Sch. 7)
- F647** Words in s. 221(1) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 90(a)** (with s. 312(1))
- F648** Words in s. 221(1) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 90(b)** (with s. 312(1))
- F649** Words in s. 221(1) inserted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 3(6)** (with ss. 54(4) (7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**
- F650** Words in s. 221(1) substituted (1.10.2014) by Water Act 2014 (c. 21), **ss. 59(4)(a)**, 94; S.I. 2014/1823, art. 3
- F651** Words in s. 221 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(5)** (with Sch. 7)
- F652** Words in s. 221 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(6)** (with Sch. 7)
- F653** Words in s. 221(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(9)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F654** Word in s. 221 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(7)** (with Sch. 7)
- F655** Words in s. 221(1) substituted (1.10.2014) by Water Act 2014 (c. 21), **ss. 59(4)(b)**, 94; S.I. 2014/1823, art. 3
- F656** Words in s. 221 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(8)** (with Sch. 7)
- F657** Words in s. 221(1) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(10)(a)(i)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F658** Words in s. 221(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(10)(a)(ii)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

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- F659** Words in s. 221(1) added (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(10)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F660** Word in s. 221 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(9)** (with Sch. 7)
- F661** S. 221(1A) inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 304(10)** (with Sch. 7)

#### **Modifications etc. (not altering text)**

- C188** S. 221 applied (1.4.2004) by Water Act 2003 (c. 37), **ss. 27(3)**, 105(3); S.I. 2004/641, art. 3(i) (with Sch. 3 para. 7)
- C189** S. 221(1): definition applied (01.12.1991) by Land Drainage Act 1991 (c. 59, SIF 73:1), **ss. 61(2)**, 67(2)(6), 76(2).
- C190** S. 221(3) extended (14.7.2014) by Water Act 2014 (c. 21), **ss. 61(10)**, 94(2)(n)

#### **Marginal Citations**

- M96** 1991 c. 56.  
**M97** 1947 c. 48.  
**M98** 1991 c. 56.  
**M99** 1991 c. 59.  
**M100** 1989 c. 15.  
**M101** 1980 c. 66.  
**M102** 1990 c. 8.  
**M103** 1989 c. 15.  
**M104** 1991 c. 56.  
**M105** 1991 c. 22.  
**M106** 1978 c. 30.  
**M107** 1968 c. 59.  
**M108** 1991 c. 22.  
**M109** 1950 c. 39.  
**M110** 1991 c. 60.  
**M111** 1991 c. 56.  
**M112** 1991 c. 59.  
**M113** 1989 c. 15.  
**M114** 1991 c. 60.

#### *Other supplemental provisions*

#### **[<sup>F662</sup>222 Crown application.**

- (1) Subject to the provisions of this section, this Act binds the Crown.
- (2) No contravention by the Crown of any provision made by or under this Act shall make the Crown criminally liable; but the High Court may, on the application of the [<sup>F663</sup>appropriate body], declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Notwithstanding anything in subsection (2) above, the provisions of this Act shall apply to persons in the public service of the Crown as they apply to other persons.
- (4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any powers of entry exercisable in relation to them specified in the certificate, that it is requisite or expedient that, in the interests of national security, the powers should

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not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises.

- (5) Subject to subsection (4) above, the powers conferred by sections 154, 156, 160, 162(3) and 168 above shall be exercisable in relation to land in which there is a Crown or Duchy interest only with the consent of the appropriate authority.
- (6) Nothing in this section shall be taken as in any way affecting Her Majesty in her private capacity; and this subsection shall be construed as if section 38(3) of the <sup>M115</sup>Crown Proceedings Act 1947 (interpretation of references to Her Majesty in her private capacity) were contained in this Act.
- (7) Nothing in this Act, as read with the other provisions of this section, shall be construed as conferring any power of levying drainage charges in respect of lands below the high-water mark of ordinary spring tides.
- (8) Section 74 of the <sup>M116</sup>Land Drainage Act 1991 (Crown application), so far as it relates to land in which there is a Crown or Duchy interest, shall apply in relation to the flood defence provisions of this Act as it applies in relation to that Act; but nothing in this subsection shall affect any power conferred by this Act for the purposes both of the Agency's [<sup>F664</sup>or the NRBW's] functions under those provisions and of other functions of the Agency [<sup>F665</sup>or the NRBW].
- (9) In this section—  
“the appropriate authority” has the same meaning as it has in Part XIII of the <sup>M117</sup>Town and Country Planning Act 1990 by virtue of section 293(2) of that Act;  
<sup>F666</sup>“the appropriate body” means—  
(a) in relation to any act or omission of the Crown in England, the Agency;  
(b) in relation to any act or omission of the Crown in Wales, the NRBW;]  
“Crown or Duchy interest” means an interest which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;  
“Crown premises” means premises held by or on behalf of the Crown.
- (10) The provisions of subsection (3) of section 293 of the <sup>M118</sup>Town and Country Planning Act 1990 (questions relating to Crown application) as to the determination of questions shall apply for the purposes of this section.

<sup>F667</sup>(11) This section shall apply in relation to sections 3, 4 and 10 of the Water Act 2003 as it applies in relation to the provisions of this Act.]]

#### Textual Amendments

- F662** S. 222 substituted (1.7.1997 for certain purposes, 1.1.2018 in so far as not already in force) by 1995 c. 25, ss. 116, 125(2), **Sch. 21 Pt. I para. 2(4)** (with ss. 7(6), 115, 117); S.I. 1997/1626, **art. 2** (with transitional provisions in **art. 3**); S.I. 2017/1045, **art. 2(b)**
- F663** Words in s. 222(2) substituted (1.4.2013) by **The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 305(2)** (with Sch. 7)
- F664** Words in s. 222(8) inserted (1.4.2013) by **The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 305(3)(a)** (with Sch. 7)
- F665** Words in s. 222(8) inserted (1.4.2013) by **The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 305(3)(b)** (with Sch. 7)

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- F666** Words in s. 222(9) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 305(4)** (with Sch. 7)
- F667** S. 222(11) added (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 13**; S.I. 2006/984, art. 2(s)(i)

**Modifications etc. (not altering text)**

- C191** S. 222 (as in force immediately before the substitution made by 1995 c. 25, Sch. 21 para. 2(4) and for so long as the substituted s. 222 does not apply to Pt. 2 of this Act) applied (1.4.2006) by [Water Act 2003 \(c. 37\)](#), **ss. 33(3)(e)**, 105(3); S.I. 2006/984, art. 2(p)

**Marginal Citations**

- M115** 1947 c. 44.  
**M116** 1991 c. 59.  
**M117** 1990 c. 8.  
**M118** 1990 c. 8.

<sup>F668</sup>**223 Exemption for visiting forces.**

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**Textual Amendments**

- F668** S. 223 repealed (1.1.2018) by [Water Act 2003 \(c. 37\)](#), ss. 32, 105(3), **Sch. 9 Pt. 1**; S.I. 2017/1043, art. 2(d)(h)

<sup>F669</sup>**[224 Application to the Isles of Scilly.**

- (1) Subject to the provisions of any order under this section, this Act shall not apply in relation to the Isles of Scilly.
- (2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Act to the Isles of Scilly; and any such order may provide for the application of those provisions to those Isles with such modifications as may be specified in the order.
- (3) An order under this section may—
  - (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.
- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

**Textual Amendments**

- F669** S. 224 substituted (1.2.1996 in so far as it confers power to make an order or make provision in relation to the exercise of that power and 1.4.2020 in so far as not already in force) by [1995 c. 25](#), **ss. 118(5)**, 125(2) (with [ss. 7\(6\)](#), 115, 117); S.I. 1996/186, **art. 2** (with [art. 4](#)); S.I. 2020/216, art. 2

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## **225 Short title, commencement and extent.**

- (1) This Act may be cited as the Water Resources Act 1991.
- (2) This Act shall come into force on 1st December 1991.
- (3) Subject to subsections (4) to (6) of section 2 and to section 224 above, to the extension of section 166(3) above to Scotland and to the extension, by virtue of any other enactment, of any provision of this Act to the territorial sea, this Act extends to England and Wales only.
- (4) Nothing in this Act, so far as it extends to Scotland, shall authorise the [<sup>F670</sup>Agency] to acquire any land in Scotland compulsorily.

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### **Textual Amendments**

**F670** Word in s. 225 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (wth ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**



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## SCHEDULES

### <sup>F671</sup>SCHEDULE 1

#### Textual Amendments

**F671** Sch. 1 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 178, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### SCHEDULE 2

Section 2.

#### ORDERS AND AGREEMENTS FOR TRANSFER OF OF NAVIGATION, HARBOUR AND CONSERVANCY FUNCTIONS

#### Modifications etc. (not altering text)

**C192** Sch. 2: Functions transferred (1.4.1996) to the Agency by 1995 c. 25, s. 2(1)(a)(vii) (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### *Powers to transfer functions or property*

- 1 (1) The [<sup>F672</sup>appropriate agency] may at any time apply to the Ministers for an order under this Schedule transferring to the [<sup>F672</sup>appropriate agency] any of the functions or property of a navigation authority, harbour authority or conservancy authority.
- (2) The power to make an order under this Schedule shall be exercisable by statutory instrument.
- (3) Any transfer of functions or property which could be effected by an order under this Schedule may, with the consent of the Ministers, be effected by agreement between the [<sup>F672</sup>appropriate agency] and the other body concerned.
- (4) Where, in accordance with this paragraph, the [<sup>F672</sup>appropriate agency] may apply for an order transferring any functions or property of another body, that body may itself apply for such an order.
- (5) For the purposes of this Schedule the references in sub-paragraph (1) above to a navigation authority, to a harbour authority and to a conservancy authority shall each include a reference to a body which no longer has any members but which, if it had members, would be such an authority

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#### Textual Amendments

**F672** Words in Sch. 2 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 306** (with Sch. 7)

#### *Consultation with affected body*

- 2 (1) Before determining whether to make an order on an application under paragraph 1 above, the Ministers shall—
- (a) consult whichever of the following is not the applicant, that is to say, the [<sup>F672</sup>appropriate agency] and the body from which any functions or property are proposed in the application to be transferred; and
  - (b) consider any representations made with respect to the application by the [<sup>F672</sup>appropriate agency] or, as the case may be, by any such body.
- (2) Sub-paragraph (1) above shall not require the Ministers to consult, or consider representations from, any body which no longer has any members.

#### Textual Amendments

**F672** Words in Sch. 2 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 306** (with Sch. 7)

#### *Public consultation*

- 3 (1) If the Ministers propose to make an order on an application under paragraph 1 above, they shall prepare a draft order, and shall cause notice of their intention to make an order—
- (a) to be published in the London Gazette and in such other manner as they think best adapted for informing persons affected; and
  - (b) to be served on—
    - (i) the [<sup>F672</sup>appropriate agency];
    - (ii) any body (other than one no longer having any members) from which any functions or property are proposed to be transferred; and
    - (iii) any such navigation authority, harbour authority or conservancy authority not falling within paragraph (ii) above as appears to the Ministers to be affected by the proposals.
- (2) A notice under sub-paragraph (1) above shall specify—
- (a) the place where copies of the draft order, and of any map to which it refers, may be inspected and obtained; and
  - (b) the time (not being less than twenty-eight days) within which, and the manner in which, objections to the draft order may be made.
- (3) Before making any order on an application under paragraph 1 above, the Ministers—
- (a) shall consider any objections which may be duly made to the draft order; and
  - (b) may, if they think fit, cause a local inquiry to be held with respect to any such objections;

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and, in making the order, the Ministers may make such modifications in the terms of the draft as appear to them desirable.

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#### Textual Amendments

**F672** Words in Sch. 2 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 306** (with Sch. 7)

#### *Supplemental provisions of order*

- 4 (1) An order under this Schedule may contain such incidental, supplementary, consequential and transitional provisions as the Ministers consider necessary or expedient.
- (2) Without prejudice to the generality of sub-paragraph (1) above, the provision that may be included in an order by virtue of that sub-paragraph shall include such provisions as the Ministers consider necessary or expedient with respect to—
- (a) the transfer of assets and liabilities, the payment of compensation and other financial adjustments;
  - (b) the amendment, adaptation or repeal of local enactments; and
  - (c) the application, subject to such modifications as may be specified in the order, of provisions corresponding to those originally made by or under Part IX of the <sup>M120</sup>Water Resources Act 1963.

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#### Marginal Citations

**M120** 1963 c. 38.

#### *Objection to final order by affected bodies*

- 5 (1) After making an order under this Schedule, the Ministers, if an objection—
- (a) has been duly made by the [<sup>F673</sup>appropriate agency] or any other body on which notice is required to be served under paragraph 3 above; and
  - (b) has not been withdrawn,
- shall serve notice of the making of the order and of the effect of the order on the [<sup>F673</sup>appropriate agency] or, as the case may be, that body.
- (2) Where a notice is required to be served under sub-paragraph (1) above, the order shall not have effect before the end of a period of twenty-eight days from the date of service of that notice.
- (3) If, within the period of twenty-eight days mentioned in sub-paragraph (2) above, any body (including the [<sup>F673</sup>appropriate agency]) on which notice has been served under sub-paragraph (1) above gives notice to one of the Ministers objecting to the order, and the objection is not withdrawn, the order shall be subject to special parliamentary procedure.

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### Textual Amendments

**F673** Words in [Sch. 2 para. 5](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 306](#) (with [Sch. 7](#))

### *Public notice of order*

- 6 (1) After making an order under this Schedule, the Ministers shall publish in the London Gazette, and in such other manner as they think best adapted for informing persons affected, a notice—
- (a) stating that the order has been made; and
  - (b) naming a place where a copy of the order may be seen at all reasonable hours.
- (2) In the case of an order to which sub-paragraph (1) of paragraph 5 above applies, a notice under sub-paragraph (1) above—
- (a) shall not be published until the end of the period of twenty-eight days mentioned in sub-paragraph (2) of that paragraph; and
  - (b) shall state whether or not the order is to be subject to special parliamentary procedure.

### *Challenge of order*

- 7 (1) Subject to sub-paragraph (3) below, if any person aggrieved by an order under this Schedule desires to question its validity on the ground—
- (a) that it is not within the powers of this Schedule; or
  - (b) that any requirement of this Schedule has not been complied with in relation to the order,
- he may, within six weeks after the first publication of the notice required by paragraph 6 above, make an application for the purpose to the High Court.
- (2) Where an application under sub-paragraph (1) above is duly made to the High Court, that Court, if satisfied—
- (a) that the order is not within the powers of this Schedule; or
  - (b) that the interests of the applicant have been substantially prejudiced by any requirements of this Schedule not having been complied with,
- may quash the order either generally or in so far as it affects the applicant.
- (3) The preceding provisions of this paragraph—
- (a) shall not apply to any order which is confirmed by Act of Parliament under section 6 of the <sup>M121</sup>Statutory Orders (Special Procedure) Act 1945; and
  - (b) shall have effect in relation to any other order which is subject to special parliamentary procedure by virtue of the provisions of this Schedule as if, for the reference to the first publication of the notice required by paragraph 6 above, there were substituted a reference to the date on which the order becomes operative under that Act of 1945.
- (4) Except as provided by this paragraph, the validity of an order under this Schedule shall not, either before or after the order has been made, be questioned in any legal proceedings whatsoever.

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#### Marginal Citations

M121 1945 c. 18 (9 & 10 Geo 6).

#### *Effect of order or agreement*

- 8 (1) Where, by virtue of an order or agreement under this Schedule, property is transferred to the [F674 appropriate agency] on the terms that—
- (a) the body from which it is transferred shall continue liable for the repayment of, and payment of interest on, any sum borrowed in connection with the property; and
  - (b) the [F674 appropriate agency] shall make payments to that body in respect of amounts paid by that body by reason of its continuing so liable,
- any payment so made by the shall be deemed to be a capital payment or an annual payment, according as the amount in respect of which it is made was paid in or towards repayment of the loan or by way of interest thereon.
- (2) Property vested in the [F674 appropriate agency] by virtue of an order or agreement under this Schedule shall not be treated as so vested by way of sale for the purpose of section 12 of the M122 Finance Act 1895 (which provides for charging stamp duty in the case of certain statutory transfers by way of sale).
- [F675 (3) A land transaction by which property is vested in the [F674 appropriate agency] by virtue of an order or agreement under this Schedule is exempt from charge for the purposes of stamp duty land tax.
- (4) Relief under sub-paragraph (3) must be claimed in a land transaction return or an amendment of such a return.
- (5) In this paragraph—
- “land transaction” has the meaning given by section 43(1) of the Finance Act 2003;
  - “land transaction return” has the meaning given by section 76(1) of that Act.]

#### Textual Amendments

**F674** Words in Sch. 2 para. 8 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 306** (with Sch. 7)

**F675** Sch. 2 para. 8(3)-(5) inserted (1.12.2003) by [The Stamp Duty Land Tax \(Consequential Amendment of Enactments\) Regulations 2003 \(S.I. 2003/2867\)](#), reg. 1, **Sch. para. 17**

#### Marginal Citations

M122 1895 c. 16.

#### *Ministers' expenses*

- 9 (1) The costs incurred by the Ministers in connection with the making and notification of an order under this Schedule shall be paid by the applicant for the order; and, if there is more than one, the Ministers may apportion the costs between the applicants.

*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) The Ministers may require any applicant for an order under this Schedule to give security for the payment of any costs payable by the applicant under this paragraph.
- (3) The reference in sub-paragraph (1) above to any costs incurred in connection with the making and notification of an order under this Schedule includes a reference to any costs incurred in relation to any such order under the Statutory Orders (Special Procedure) Act 1945.

*Compensation for officers and staff*

- 10 (1) The Ministers shall by regulations make provision requiring the payment by the [<sup>F676</sup>appropriate agency], subject to such exceptions or conditions as may be prescribed, of compensation to or in respect of persons who—
  - (a) are, or but for any military or other designated service of theirs would be, the holders of any such situation, place or employment as may be prescribed; and
  - (b) suffer loss of employment, or loss or diminution of emoluments, in consequence of any order or agreement under this Schedule.
- (2) Regulations under this paragraph may be so framed as to have effect as from a date earlier than that on which they are made; but so much of any regulations as provides that any provision is to have effect as from a date earlier than that on which they are made shall not place any person other than the [<sup>F676</sup>appropriate agency] in a worse position than he would have been in if the regulations had been so framed as to have effect only as from the date on which they are made.
- (3) Regulations made under this paragraph may include provision as to the manner in which, and the person to whom, any claim for compensation under this paragraph is to be made, and for the determination of all questions arising under the regulations.
- (4) In this paragraph “military or other designated service” means any such service in any of Her Majesty’s forces or other employment (whether or not in the service of Her Majesty) as may be prescribed by regulations under this paragraph.

**Textual Amendments**

**F676** Words in Sch. 2 para. 10 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 306** (with Sch. 7)

*Power to amend local enactments*

- 11 (1) If it appears to the Ministers by whom an order is made under this Schedule that any local enactment passed or made before the relevant date—
  - (a) is inconsistent with any of the provisions of that order; or
  - (b) requires to be amended or adapted, having regard to any of the provisions of that order,
 those Ministers may by order repeal, amend or adapt that enactment to such extent, or in such manner, as they may consider appropriate.
- (2) Any order under this paragraph may include such transitional, incidental, supplementary and consequential provisions as the Ministers may consider necessary or expedient.

*Status: Point in time view as at 17/09/2018.*

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- (3) The power to make an order under this paragraph shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) In this paragraph “relevant date” means the date which was the second appointed day for the purposes of section 133 of the <sup>M123</sup>Water Resources Act 1963.
- (5) The provisions of this paragraph shall have effect without prejudice to the exercise of any other power to repeal, amend or adapt local enactments which is conferred by any other enactment.

**Marginal Citations**

**M123** 1963 c. 38.

*Interpretation*

- 12 (1) In this Schedule “local enactment” means—
- (a) a local or private Act;
  - (b) a public general Act relating to London;
  - (c) an order or scheme made under an Act, confirmed by Parliament or brought into operation in accordance with special parliamentary procedure; or
  - (d) an enactment in a public general Act amending a local or private Act or any such order or scheme.
- (2) References in this Schedule to the Ministers, in a case in which all the functions in question are exercisable in Wales and all the property in question is situated there, shall have effect as references to the Secretary of State.

<sup>F677</sup>SCHEDULE 3

**Textual Amendments**

**F677** Sch. 3 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 179, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

<sup>F678</sup>SCHEDULE 4

*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### Textual Amendments

**F678** Sch. 4 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 179, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

## SCHEDULE 5

Section 21.

### PROCEDURE RELATING TO STATEMENTS ON MINIMUM ACCEPTABLE FLOW

#### *Application of Schedule*

- 1 (1) This Schedule applies in the case of any draft statement prepared under section 21 or 22 of this Act.
- (2) References in this Schedule, in relation to a statement for amending the provision for determining the minimum acceptable flow of any inland waters, to the inland waters to which the statement relates are references to the inland waters to which the proposed amendment relates.

#### *Notice of proposed statement*

- 2 (1) Before submitting the draft statement to the Secretary of State, the [F679 appropriate agency] shall publish a notice—
- (a) stating the general effect of the draft statement;
  - (b) specifying the place where a copy of the draft statement, and of any relevant map or plan, may be inspected by any person free of charge at all reasonable times during the period of twenty-eight days beginning with the date of first publication of the notice; and
  - (c) stating that any person may within that period, by notice in writing to the Secretary of State, object to the approval of the statement.
- (2) A notice under this paragraph shall be published either—
- (a) at least once in each of two successive weeks, in one or more newspapers circulating in the locality in which the inland waters to which the draft statement relates are situated; or
  - (b) in any other manner which, in any particular case, may be certified by the Secretary of State to be expedient in that case.
- (3) Not later than the date on which the notice is first published in pursuance of subparagraph (2) above, the [F679 appropriate agency] shall serve a copy of the notice on—
- (a) every local authority or joint planning board whose area comprises any inland waters to which the draft statement relates;
  - (b) any water undertaker having the right to abstract water from any such inland waters;
  - (c) any other water undertaker which was consulted in relation to the draft statement in pursuance of section 21(3)(b) of this Act;
  - (d) the drainage board for any internal drainage district which comprises any such inland waters or from which water is discharged into any such inland waters;



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- (e) any navigation authority, harbour authority or conservancy authority having functions in relation to any such waters or any related inland waters;
  - (f) if any such waters or any related inland waters are tidal waters in relation to which there is no such navigation authority, harbour authority or conservancy authority, [<sup>F680</sup>the Secretary of State for Transport];
  - (g) any person authorised by a licence under Part I of the <sup>M130</sup>Electricity Act 1989 to generate electricity [<sup>F681</sup>who has a right to abstract water from any such waters or related inland waters].; and
  - (h) every person who—
    - (i) has given notice to the [<sup>F679</sup>appropriate agency] requesting it to notify him of action taken in connection with the determination of a minimum acceptable flow for any inland waters to which the draft statement relates; and
    - (ii) if the [<sup>F679</sup>appropriate agency] have required him to pay a reasonable charge for being so notified, has paid that charge.
- (4) The [<sup>F679</sup>appropriate agency] shall also publish a notice in the London Gazette—
- (a) stating that the draft statement has been submitted to the Secretary of State;
  - (b) naming the areas in respect of which a copy of a notice is required to be served under sub-paragraph (3)(a) above;
  - (c) specifying a place where a copy of the draft statement and of any relevant map or plan may be inspected; and
  - (d) where the notice required by sub-paragraph (1) above is published in a newspaper, giving the name of the newspaper and the date of an issue containing the notice.
- (5) In this paragraph “related inland waters” has the same meaning as for the purposes of subsection (3) of section 21 of this Act is given by subsection (8) of that section.

#### Textual Amendments

**F679** Words in Sch. 5 paras. 2-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 307** (with Sch. 7)

**F680** Words in Sch. 5 para. 2(3)(f) substituted (25.11.2002) by [S.I. 2002/2626](#), art. 20, **Sch. 2 para. 18(3)**

**F681** Words in Sch. 5 para. 2(3)(g) added (1.4.1996) by [1995 c. 25, s. 120\(1\)](#), **Sch. 22 para. 180** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), art. 3

#### Modifications etc. (not altering text)

**C194** Sch. 5 para. 2(3)(a) applied (with modifications) (4.6.1996) by [S.I. 1996/1243](#), art. 18, **Sch. 5 Pt. II para. 6(2)(b)**

#### Marginal Citations

**M130** 1989 c. 29.

#### *Duty to provide copy of draft statement*

- 3 The [<sup>F679</sup>appropriate agency] shall, at the request of any person, furnish him with a copy of the draft statement on payment of such charge as the [<sup>F679</sup>appropriate agency] thinks reasonable.

*Status: Point in time view as at 17/09/2018.*

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### Textual Amendments

**F679** Words in [Sch. 5 paras. 2-5](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 307](#) (with [Sch. 7](#))

### *Approval of draft statement*

- 4 (1) The Secretary of State may approve the statement either in the form of the draft or in that form as altered in such manner as he thinks fit.
- (2) Where the Secretary of State—
- (a) proposes to make any alteration of a statement before approving it; and
  - (b) considers that any persons are likely to be adversely affected by it,
- the [<sup>F679</sup>appropriate agency] shall give and publish such additional notices, in such manner, as the Secretary of State may require.
- (3) Sub-paragraph (4) below shall apply if, before the end of—
- (a) the period of twenty-eight days referred to in sub-paragraph (1) of paragraph 2 above;
  - (b) the period of twenty-five days from the publication in the London Gazette of the notice under sub-paragraph (4) of that paragraph; or
  - (c) any period specified in notices under sub-paragraph (2) above,
- notice of an objection is received by the Secretary of State from any person on whom a notice is required by this Schedule to be served, or from any other person appearing to the Secretary of State to be affected by the draft statement, either as prepared in draft or as proposed to be altered.
- (4) Where this sub-paragraph applies and the objection in question is not withdrawn, the Secretary of State, before approving the statement, shall either—
- (a) cause a local inquiry to be held; or
  - (b) afford to the objector and to the [<sup>F679</sup>appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) Where under this paragraph an objection is received by the Secretary of State from—
- (a) the drainage board for any internal drainage district which comprises any inland waters to which the draft statement relates or, as the case may be, from which water is discharged into any such inland waters; or
  - (b) such an association or person claiming to represent a substantial fishery interest affected by the statement as is certified by the Minister to appear to him to represent such an interest,
- sub-paragraphs (1) to (4) above and paragraph 5 below shall have effect as if references to the Secretary of State (except the first reference in sub-paragraph (3) above) were references to the Ministers.

### Textual Amendments

**F679** Words in [Sch. 5 paras. 2-5](#) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 307](#) (with [Sch. 7](#))

*Status: Point in time view as at 17/09/2018.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 02 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *Notice and inspection of approved statement*

- 5 (1) Where a statement is approved under this Schedule, whether in the form of the draft proposed by the [<sup>F679</sup>appropriate agency] or with alterations, the Secretary of State shall give notice to the [<sup>F679</sup>appropriate agency]—
- (a) stating that the statement has been approved, either without alteration or with alterations specified in the notice; and
  - (b) specifying the date (not being earlier than twenty-eight days after the date of the notice under this paragraph) on which the statement shall have effect;
- and the [<sup>F679</sup>appropriate agency] shall forthwith publish the notice.
- (2) The [<sup>F679</sup>appropriate agency] shall keep a copy of every statement, as approved under this Schedule, available at its offices for inspection by the public, free of charge, at all reasonable times.

#### **Textual Amendments**

**F679** Words in Sch. 5 paras. 2-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 307** (with Sch. 7)

## [<sup>F682</sup>SCHEDULE 6

Sections 27A(4) and 39B(7)

### ORDERS RELATING TO ABSTRACTION OF SMALL QUANTITIES AND COMPULSORY REGISTRATION OF PROTECTED RIGHTS

#### **Textual Amendments**

**F682** Sch. 6 substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), s. 105(3), **Sch. 7 para. 14**; S.I. 2004/641, art. 3(y), **Sch. 2** (with **Sch. 3 para. 7**)

### *Notice of draft order*

- 1 (1) An application to the Secretary of State for an order under section 27A(1) or 39B(3) of this Act (an “order”) shall be accompanied by a draft of the proposed order.
- (2) Before submitting a draft order to the Secretary of State, the [<sup>F683</sup>appropriate agency] shall publish a notice—
- (a) stating the general effect of the draft order;
  - (b) specifying the place where a copy of the draft order, and of any relevant map or plan, may be inspected by any person free of charge at all reasonable times during the period of twenty-eight days beginning with the date of first publication of the notice; and
  - (c) stating that any person may within that period, by notice to the Secretary of State, object to the making of the order.
- (3) A notice under this paragraph shall be published either—
- (a) at least once in each of two successive weeks, in one or more newspapers circulating in the area to which the draft order relates; or

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- (b) in any other manner which, in any particular case, may be certified by the Secretary of State to be expedient in that case.
- (4) Not later than the date on which the notice is first published in pursuance of sub-paragraph (2) above, the [<sup>F684</sup>appropriate agency] shall serve a copy of the notice on—
- (a) every local authority (in its capacity as the local planning authority), joint planning board [<sup>F685</sup>or National Park authority][<sup>F685</sup>, National Park authority or strategic planning panel] whose area consists of, includes or is included in the area to which the draft order relates;
  - (b) any relevant water undertaker;
  - (c) any internal drainage board—
    - (i) whose district consists of, includes or is included in the area to which the draft order relates;
    - (ii) from whose district water is discharged into any relevant source of supply; or
    - (iii) into whose district water is discharged from any relevant source of supply;
  - (d) any navigation authority, harbour authority or conservancy authority having functions in relation to—
    - (i) any relevant source of supply; or
    - (ii) any related inland waters;
  - (e) if a relevant source of supply or related inland waters are tidal waters in relation to which there is no such navigation authority, harbour authority or conservancy authority, the Secretary of State for Transport;
  - (f) any person authorised by a licence under Part 1 of the Electricity Act 1989 to generate electricity who is (in that capacity) the holder of a licence to abstract water under Chapter 2 of Part 2 of this Act from—
    - (i) any relevant source of supply; or
    - (ii) any related inland waters;
  - (g) [<sup>F686</sup>Natural England], if the area to which the order relates is or includes England, or part of it; [<sup>F687</sup>and]
  - <sup>F688</sup>(h) . . . . .
  - (i) the Broads Authority (established under the Norfolk and Suffolk Broads Act 1988), if the area to which the order relates is or includes the Broads (as defined in that Act), or part of it.
- (5) Where an application for an order is made, the [<sup>F689</sup>appropriate agency] shall also publish a notice in the London Gazette—
- (a) stating that the draft order has been submitted to the Secretary of State;
  - (b) naming the areas of each of the authorities or boards in respect of which a copy of the notice is required to be served under sub-paragraph (4)(a) above;
  - (c) specifying a place where a copy of the draft order and of any relevant map or plan may be inspected; and
  - (d) where the notice required by sub-paragraph (2) above is published in a newspaper, giving the name of the newspaper and the date of an issue containing the notice.
- (6) In this paragraph—

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- (a) where a draft order makes provision generally (rather than for a specified geographical area), references to the area to which the order relates are to the whole area (whether England, Wales or both of them) in relation to which the order is applied;
- (b) references to a National Park authority are to a National Park authority established under Part 3 of the 1995 Act;
- [<sup>F690</sup>(ba) references to a strategic planning panel are to a strategic planning panel established under section 60D of the Planning and Compulsory Purchase Act 2004;]
- (c) a “relevant source of supply”, in relation to a draft order, means—
  - (i) if the draft order relates only to particular sources of supply (or a class of them) in an area, any of those sources of supply (or any source of supply in that class) in that area;
  - (ii) otherwise, any source of supply in the area to which the draft order relates;
- (d) a “relevant water undertaker”, in relation to a draft order, means a water undertaker which is the holder of a licence to abstract water under Chapter 2 of Part 2 of this Act from—
  - (i) a relevant source of supply; or
  - (ii) a source of supply which is related to a relevant source of supply;
- (e) for the purposes of paragraph (d) above, a source of supply (the “related source”) is related to a relevant source of supply if it appears to the [<sup>F691</sup>appropriate agency] that, having regard to the extent to which the level or flow of water in the related source depends on the level or flow of the waters in the relevant source of supply, the ability of the water undertaker to abstract water from the related source in accordance with its licence may be substantially affected as a result of the draft order;
- (f) “related inland waters” are inland waters the level or flow of which may, in the [<sup>F691</sup>appropriate agency's] opinion, be affected by changes in the level or flow of the waters in a relevant source of supply.

#### Textual Amendments

- F683** Words in Sch. 6 para. 1(2) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 308(2)(a)** (with Sch. 7)
- F684** Words in Sch. 6 para. 1(4) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 308(2)(b)(i)** (with Sch. 7)
- F685** Words in Sch. 6 para. 1(4)(a) substituted (6.9.2015 for specified purposes, 7.1.2021 in so far as not already in force) by [Planning \(Wales\) Act 2015 \(anaw 4\)](#), s. 58(2)(b)(4)(b), **Sch. 2 para. 16(a)**; S.I. 2021/7, reg. 2(c)
- F686** Words in Sch. 6 para. 1(4)(g) substituted (1.10.2006) by [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#), s. 107, **Sch. 11 para. 133**; S.I. 2006/2541, art. 2 (with Sch.)
- F687** Word in Sch. 6 para. 1(4)(g) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 308(2)(b)(ii)** (with Sch. 7)
- F688** Sch. 6 para. 1(4)(h) omitted (1.4.2013) by virtue of [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 308(2)(b)(iii)** (with Sch. 7)
- F689** Words in Sch. 6 para. 1(5) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 308(2)(c)** (with Sch. 7)
- F690** Sch. 6 para. 1(6)(ba) inserted (6.9.2015 for specified purposes, 7.1.2021 in so far as not already in force) by [Planning \(Wales\) Act 2015 \(anaw 4\)](#), s. 58(2)(b)(4)(b), **Sch. 2 para. 16(b)**; S.I. 2021/7, reg. 2(c)

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**F691** Words in Sch. 6 para. 1(6) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 308(2)(d)** (with Sch. 7)

*Duty to provide copy of draft order*

- 2 Where an application for an order is made, the [<sup>F692</sup>appropriate agency] shall, at the request of any person, furnish him with a copy of the draft order on payment of such charge as the [<sup>F692</sup>appropriate agency] thinks reasonable.

**Textual Amendments**

**F692** Words in Sch. 6 paras. 2-4 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 308(3)** (with Sch. 7)

*Making of order*

- 3 (1) Where an application for an order is made, the Secretary of State may make the order either in the form of the draft or in that form as altered in such manner as he thinks fit.
- (2) Where the Secretary of State—
- (a) proposes to make any alteration of an order before making it; and
  - (b) considers that any persons are likely to be adversely affected by it,
- the [<sup>F692</sup>appropriate agency] shall give and publish such additional notices, in such manner, as the Secretary of State may require.
- (3) Sub-paragraph (4) below shall apply if before the end of—
- (a) the period of twenty-eight days referred to in sub-paragraph (2)(b) of paragraph 1 above;
  - (b) the period of twenty-five days from the publication in the London Gazette of the notice under sub-paragraph (5) of that paragraph; or
  - (c) any period specified in notices under sub-paragraph (2) above,
- notice of an objection is received by the Secretary of State from any person on whom a notice is required by this Schedule to be served, from any other person appearing to the Secretary of State to be affected by the order (either as prepared in draft or as proposed to be altered) or, in a case where the Secretary of State directed the [<sup>F692</sup>appropriate agency] to apply for the order, from the [<sup>F692</sup>appropriate agency].
- (4) Where this sub-paragraph applies and the objection in question is not withdrawn, the Secretary of State, before making the order, may take such steps as he sees fit and, in particular, may—
- (a) cause a local inquiry to be held; or
  - (b) afford to the objector and to the [<sup>F692</sup>appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) Where—
- (a) the order (whether as prepared in draft or as proposed to be altered) relates to any tidal water situated in Wales (or in an area of the sea adjoining either the coast of Wales or an area of sea forming part of Wales); and

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- (b) no navigation authority, harbour authority or conservancy authority has functions in relation to that tidal water,  
the Secretary of State shall not make the order except with the approval of the Secretary of State for Transport.

**Textual Amendments**

**F692** Words in Sch. 6 paras. 2-4 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 308(3)** (with Sch. 7)

*Notice and inspection of final order*

- 4 (1) Where an order is made under section 27A(1) or 39B(3) of this Act, whether in the form of the draft proposed by the [<sup>F692</sup>appropriate agency] or with alterations, the Secretary of State shall give notice to the [<sup>F692</sup>appropriate agency]—
- (a) stating that the order has been made, either without alteration or with alterations specified in the notice; and
- (b) specifying the date (not being earlier than twenty-eight days after the date of the notice under this paragraph) on which the order shall have effect;
- and the [<sup>F692</sup>appropriate agency] shall forthwith publish the notice.
- (2) The [<sup>F692</sup>appropriate agency] shall keep a copy of every order made under section 27A(1) or 39B(3) of this Act available at its offices for inspection by the public, free of charge, at all reasonable times.]

**Textual Amendments**

**F692** Words in Sch. 6 paras. 2-4 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 308(3)** (with Sch. 7)

SCHEDULE 7

Sections 48, 55, 60, 61 and 65.

LICENCES OF RIGHT

*Applications for licences of right under paragraph  
30 or 31 of Schedule 26 to the Water Act 1989*

- 1 (1) Paragraphs 30 and 31 of Schedule 26 to the <sup>M131</sup>Water Act 1989 shall continue to apply (notwithstanding the repeals made by the <sup>M132</sup>Water Consolidation (Consequential Provisions) Act 1991 but subject to the following provisions of this Schedule) in relation—
- (a) to any application made under either of those paragraphs which is outstanding immediately before the coming into force of this Act; and
- (b) to any appeal against a determination made, on an application under either of those paragraphs, either before the coming into force of this Act or, thereafter, by virtue of paragraph (a) above;

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but for the purposes of any such application or appeal any reference in those paragraphs to a provision of the <sup>M133</sup>Water Resources Act 1963 which is re-enacted in this Act shall have effect, in relation to a time after the coming into force of this Act, as a reference to the corresponding provision of this Act.

- (2) Where an application for the grant of a licence by virtue of paragraph 30 or 31 of Schedule 26 to the Water Act 1989 has been made before the end of the period within which such an application was required to be made under that paragraph, then—
- (a) sections 24 and 48 of this Act and Part II of the <sup>M134</sup>Gas Act 1965 shall have effect, until the application is disposed of, as if the licence had been granted on the date of the application and the provisions of the licence had been in accordance with the proposals contained in the application; and
  - (b) for the purposes of those sections and Part II of the said Act of 1965 any licence granted on the application shall be treated as not having effect until the application has been disposed of.
- (3) For the purposes of this paragraph an application for the grant of a licence by virtue of paragraph 30 or 31 of Schedule 26 to the Water Act 1989 above shall be taken to be disposed of on (but not before) the occurrence of whichever of the following events last occurs, that is to say—
- (a) the grant, on the determination of the application by the [<sup>F693</sup>appropriate agency], of a licence the provisions of which are in accordance with the proposals contained in the application;
  - (b) the expiration, without a notice of appeal having been given, of the period (if any) within which the applicant is entitled to give notice of appeal against the decision on the application;
  - (c) the determination or withdrawal of an appeal against that decision;
  - (d) the grant, variation or revocation, in compliance with a direction given by the Secretary of State in consequence of such an appeal, of any licence;
- and in this sub-paragraph any reference to a decision includes a reference to a decision which is to be treated as having been made by virtue of any failure of the [<sup>F693</sup>appropriate agency] to make a decision within a specified time.
- (4) Subject to the other provisions of this Schedule, any licence granted by virtue of this paragraph shall have effect as a licence under Chapter II of Part II of this Act; and, so far as necessary for the purposes of this paragraph, anything done under or for the purposes of a provision of the <sup>M135</sup>Water Resources Act 1963 applied by paragraph 30 or 31 of Schedule 26 to the 1989 Act, shall have effect as if that paragraph applied the corresponding provision of this Act and that thing had been done under or for the purposes of that corresponding provision.

#### Textual Amendments

**F693** Words in *Sch. 7 para. 1(3)* substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 309** (with *Sch. 7*)

#### Marginal Citations

**M131** 1989 c. 15.  
**M132** 1991 c. 60.  
**M133** 1963 c. 38.  
**M134** 1965 c. 36.



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M135 1963 c. 38.

*Section 48 of this Act*

- 2 Subsection (2) of section 48 of this Act shall not afford any defence to an action brought before 1st September 1992 if the licence referred to in that subsection is a 1989 Act licence of right; and there shall be no defence afforded to such an action by that subsection as applied by paragraph 1(2) above.

*Section 55 of this Act*

- 3 No application shall be made under section 55 of this Act (variation of licence on application of owner of fishing rights) in respect of any 1989 Act licence of right.

*Section 60 of this Act*

- 4 (1) Where the plaintiff in any action brought against the [<sup>F694</sup>appropriate agency] in pursuance of section 60 of this Act (liability of the [<sup>F694</sup>appropriate agency] for derogation from protected right) is entitled to a protected right for the purposes of Chapter II of Part II of this Act by reason only that he is the holder of, or has applied for, a licence of right, it shall be a defence for the [<sup>F694</sup>appropriate agency] to prove—
- (a) that the plaintiff could have carried out permissible alterations in the means whereby he abstracted water from the source of supply in question; and
  - (b) that, if he had carried out such alterations, the abstraction or, as the case may be, the obstruction or impeding of the flow of the inland waters authorised by the licence to which the action relates would not have derogated from his protected right for the purposes of that Chapter;
- and subsection (3) of that section (liability of [<sup>F694</sup>appropriate agency] for compliance with direction requiring derogation from protected rights) shall not apply to a direction given in consequence of an appeal against the decision of the [<sup>F694</sup>appropriate agency] on an application for the grant of a 1989 Act licence of right.
- (2) In this paragraph “permissible alterations”—
- (a) in relation to a person who is the holder of a licence of right, means any alteration of works, or modification of machinery or apparatus, which would fulfil the requirements of the licence as to the means whereby water is authorised to be abstracted;
  - (b) in relation to a person who is not the holder of a licence of right, but to whose application for such a licence paragraph 1 above applies, means any alteration of works, or modification of machinery or apparatus, by means of which he abstracted water from the source of supply in question during the period of five years ending with 1st September 1989, being an alteration or modification which would be within the scope of the licence if granted in accordance with the application.

**Textual Amendments**

**F694** Words in *Sch. 7 para. 4* substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 309](#) (with [Sch. 7](#))

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*Section 61 of this Act*

- 5 (1) No compensation shall be payable under section 61 of this Act (compensation for revocation or variation of a licence) in respect of the revocation or variation of a 1989 Act licence of right if the revocation or variation is for giving effect to the decision of the court in an action in respect of which paragraph 2 above has effect or in any proceedings in consequence of such an action.
- (2) Nothing in section 61(3) of this Act (compensation not payable in respect of works etc. carried out before the grant of a licence) shall apply in relation to any licence of right.

*Licences of right*

- 6 (1) In this Schedule references to a licence of right are references to—
- (a) any 1989 Act licence of right, that is to say, a licence granted (whether or not by virtue of paragraph 1 above) under paragraph 30 or 31 of Schedule 26 to the <sup>M136</sup>Water Act 1989; or
  - (b) any licence which, having been granted in pursuance of an application under section 33 of the <sup>M137</sup>Water Resources Act 1963 (or in pursuance of an appeal consequential on such an application), has effect after the coming into force of this Act by virtue of sub-paragraph (2) below.
- (2) The repeal by the <sup>M138</sup>Water Consolidation (Consequential Provisions) Act 1991 of paragraph 29(4) of Schedule 26 to the Water Act 1989 shall not prevent any licence granted as mentioned in paragraph (b) of sub-paragraph (1) above from continuing (in accordance with paragraph 1 of Schedule 2 to that Act of 1991 and subject to the preceding provisions of this Schedule) to have effect after the coming into force of this Act as a licence under Chapter II of Part II of this Act.

**Marginal Citations**

**M136** 1989 c. 15.

**M137** 1963 c. 38.

**M138** 1991 c. 60.

SCHEDULE 8

Section 73.

PROCEEDINGS ON APPLICATIONS FOR DROUGHT ORDERS

- 1 (1) The applicant for a drought order shall—
- (a) cause notice of the application to be served on the persons specified in the Table set out in sub-paragraph (2) below;
  - (b) cause a notice of the application to be published in one or more local newspapers circulating within the area affected by the order; and
  - (c) cause a notice of the application to be published in the London Gazette.
- (2) The said Table is as follows—

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## TABLE

All orders	(a) The [ <sup>F695</sup> Agency] (where it is not the applicant).  [ <sup>F696</sup> (aa) The NRBW (where it is not the applicant).] (b) Every local authority (not being [ <sup>F697</sup> an English county] council) and water undertaker (not being the applicant) whose area would be affected by the order.
Orders which suspend or modify any enactment or any order or scheme made or confirmed under any enactment.	Such persons (if any) as are specified by name in the enactment, order or scheme as being persons for whose protection it was enacted or made.
Orders concerning the taking of water from a source or the discharge of water or effluent to a place.	(a) Every local authority (not being [ <sup>F697</sup> an English county] council) in whose area the source, or the place at which water or effluent is to be discharged, is situated.(b) Every drainage board for an internal district in which the source, or the place at which water or effluent is to be discharged, is situated.(c) Every navigation authority exercising functions over any watercourse affected by the order.(d) If the order concerns any [ <sup>F698</sup> environmental permit] relating to the discharge of sewage effluent or trade effluent, the person to whom the [ <sup>F698</sup> environmental permit] was given.
Orders which authorise the carrying out of any works.	(a) Every local authority (not being [ <sup>F697</sup> an English county] council) within whose area the works are situated.(b) If the order authorises the carrying out of works in, under or over a watercourse, every drainage board for an internal drainage district within which the works, or any part of the works, are situated.
Orders which authorise the occupation and use of land.	Every owner, lessee and occupier of the land.
Orders which prohibit or limit the taking of water.	Every named person to whom the prohibition or limitation applies.

- (3) A notice for the purposes of this paragraph of an application for a drought order—  
(a) shall state the general effect of the application;

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- (b) shall specify a place within the area affected by the order where a copy of any relevant map or plan may be inspected by any person free of charge at all reasonable times within a period of seven days from the date on which it is served or, as the case may be, published;
  - (c) shall state that objections to the application may be made to the Secretary of State within seven days from the date on which it is served or, as the case may be, published; and
  - (d) in the case of an application for an order authorising the occupation and use of land, shall specify the land to which the application relates.
- (4) A notice sent in a letter in pursuance of section 220 of this Act to an address to which it may be sent in pursuance of that section shall not be treated as having been properly served for the purposes of this paragraph unless the sender takes such steps as are for the time being required to secure that the letter is transmitted in priority to letters of other descriptions.

#### Textual Amendments

- F695** Word in Sch. 8 para. 1(2) Table substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F696** Words in Sch. 8 para. 1(2) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), **art. 1(2)**, **Sch. 2 para. 310(2)** (with Sch. 7)
- F697** Words in Sch. 8 para. 1(2) Table substituted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 3(7)** (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, **art. 3**, **Sch. 1**
- F698** Words in Sch. 8 substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), **reg. 1(1)(b)**, **Sch. 26 para. 8(3)(c)** (with reg. 1(2), Sch. 4)

#### *Objections to and making of orders*

- 2 (1) If any objection is duly made with respect to an application for a drought order and is not withdrawn, then, subject to the provisions of this paragraph, the Secretary of State shall, before making the order, either—
- (a) cause a local inquiry to be held; or
  - (b) afford an opportunity—
    - (i) to the objector; and
    - (ii) if the objector avails himself of the opportunity, to the applicant and to any other persons to whom it appears to the Secretary of State expedient to afford the opportunity,
 of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (2) Subject to sub-paragraph (3) below, where, on an application for a drought order, it appears to the Secretary of State that a drought order is required to be made urgently if it is to enable the deficiency of supplies of water to be effectively met, he may direct that the requirements of sub-paragraph (1) above shall be dispensed with in relation to the application.
- (3) Nothing in sub-paragraph (2) above shall authorise the Secretary of State to fail to consider any objection to a proposed drought order which has been duly made and not withdrawn.
- (4) Notwithstanding anything in sub-paragraph (1) above, the Secretary of State may—

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- (a) require any person who has made an objection to a proposed drought order to state in writing the grounds of his objection; and
  - (b) disregard the objection for the purposes of this paragraph if the Secretary of State is satisfied—
    - (i) that the objection relates exclusively to matters which can be dealt with on a reference under Schedule 9 to this Act or by any person by whom compensation is to be assessed; or
    - (ii) in a case where the order is one confined to the extension of a period specified in a previous order, that the objection is one that has in substance been made with respect to the application for that previous order.
- (5) Subject to the requirements of this paragraph, the Secretary of State, upon being satisfied that the proper notices have been published and served, may, if he thinks fit, make the order in respect of which the application is made with or without modifications.
- (6) The Secretary of State may hold a local inquiry on any application for a drought order notwithstanding that he is not required to do so by this paragraph.
- [<sup>F699</sup>(7) For the purposes of subsection (2) of section 53 of the 1995 Act (which applies subsections (2) to (5) of section 250 of the Local Government Act 1972 to inquiries in connection with functions of or in relation to the Agency [<sup>F700</sup>or in connection with relevant environmental functions of or in relation to the NRBW]) [<sup>F701</sup>as modified by subsection (4) of that section], a local inquiry held under this paragraph with respect to an application by a water undertaker for a drought order, if it would not otherwise fall within paragraph (a) or (b) of that subsection, is to be treated as one which falls within paragraph (b).]

#### Textual Amendments

**F699** Sch. 8 para. 2(7) added (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 65, 105(3)**; S.I. 2004/641, art. 3(p) (with Sch. 3 para. 7)

**F700** Words in Sch. 8 para. 2(7) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 310(3)(a)** (with Sch. 7)

**F701** Words in Sch. 8 para. 2(7) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 310(3)(b)** (with Sch. 7)

#### *Notice after making of order*

- 3 After a drought order has been made, the person on whose application it was made shall cause to be published (in the manner in which notice of the application was required under paragraph 1 above to be published) a notice—
- (a) stating that the order has been made; and
  - (b) naming a place where a copy of it may be inspected.

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## SCHEDULE 9

Section 79.

### COMPENSATION IN RESPECT OF DROUGHT ORDERS

#### *Compensation to be made in the case of all drought orders*

- 1 Where a drought order has been made, compensation in respect of the entry upon or occupation or use of land shall be made by the applicant for the order to—
- (a) the owners and occupiers of the land; and
  - (b) all other persons interested in the land or injuriously affected by the entry upon, occupation or use of the land,
- for loss or damage sustained by reason of the entry upon, occupation or use of the land.

#### *Compensation to be made in the case of ordinary orders only*

- 2 (1) This paragraph shall apply for determining the compensation to be made, in addition to any made under paragraph 1 above, where an ordinary drought order has been made.
- (2) Compensation in respect of the taking of water from a source or its taking from a source otherwise than in accordance with a restriction or obligation which has been suspended or modified shall be made by the applicant for the order to—
- (a) the owners of the source of water; and
  - (b) all other persons interested in the source of water or injuriously affected by the taking of the water,
- for loss or damage sustained by reason of the taking of the water.
- (3) Compensation in respect of water's being discharged or not discharged to any place or its being discharged otherwise than in accordance with a restriction or obligation (whether relating to the treatment or discharge of the water) which has been suspended or modified shall be made by the applicant for the order to—
- (a) the owners of the place of discharge; and
  - (b) all other persons interested in the place of discharge or injuriously affected by the discharge or lack of discharge,
- for loss or damage sustained by reason of the water being discharged or not discharged or being discharged otherwise than in accordance with the restriction or obligation.
- (4) Compensation in respect of the imposition of a prohibition or limitation on the taking of water from a source shall be made by the applicant for the order, to any persons to whom the prohibition or limitation applies, for loss or damage sustained by reason of the prohibition or limitation.
- (5) Compensation in respect of a power to make discharges of sewage effluent or trade effluent in pursuance of any [<sup>F702</sup>environmental permit] shall be made by the applicant for the order, to any person who has been exercising that power, for loss or damage sustained by reason of the suspension or variation of the [<sup>F702</sup>environmental permit] or the attachment of conditions to the [<sup>F702</sup>environmental permit].

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### Textual Amendments

**F702** Words in Sch. 9 para. 2(5) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(3)(d)** (with reg. 1(2), Sch. 4)

### *Claims for compensation: general*

- 3
- (1) A claim for compensation under this Schedule shall be made by serving upon the applicant a notice stating the grounds of the claim and the amount claimed.
  - (2) Any question as to the right of a claimant to recover compensation, or as to the amount of compensation recoverable, shall, in default of agreement, be referred to, and determined by, the [<sup>F703</sup>Upper Tribunal] .

### Textual Amendments

**F703** Words in Sch. 9 para. 3(2) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 231** (with Sch. 5)

### *Claims for compensation under paragraph 2*

- 4
- (1) A claim for compensation under paragraph 2 above may be made at any time not later than six months after the end of the period for which the order authorises, as the case may be—
    - (a) the taking or discharge of water;
    - (b) the imposition of a prohibition or limitation on the taking of water;
    - (c) the suspension or modification of any restriction or obligation; or
    - (d) the suspension or variation of, or attachment of conditions to, any [<sup>F704</sup>environmental permit] relating to the discharge of sewage effluent or trade effluent.
  - (2) Where a claim for compensation under paragraph 2 above is made during the continuance of the ordinary drought order, the [<sup>F705</sup>Upper Tribunal] may, if it thinks fit, award a sum representing the loss or damage which is likely to be sustained by the claimant in respect of each day on which, as the case may be—
    - (a) water is taken or discharged;
    - (b) water is not discharged or is discharged otherwise than in accordance with an obligation or restriction; or
    - (c) sewage effluent or trade effluent is discharged otherwise than in accordance with [<sup>F706</sup>an environmental permit] originally given.
  - (3) In assessing the compensation to be made under paragraph 2(2) above the [<sup>F707</sup>Upper Tribunal] may, if it thinks fit, have regard to the amount of water which, on an equitable apportionment of the water available from the source between the claimant, the applicant and other persons taking water from the source, may fairly be apportioned to the claimant.
  - (4) In assessing the compensation to be made under paragraph 2(3) above in respect of the lack of discharge of compensation water, the [<sup>F708</sup>Upper Tribunal] may, if it thinks fit, have regard to the amount of water which, under the conditions existing by

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reason of the shortage of rain, would have been available to the claimant during the period during which the deficiency of supplies of water is continued, if the applicant in relation to whom the obligation was imposed had never carried on its undertaking.

- (5) In sub-paragraph (4) above “compensation water” has the same meaning as in section 77 of this Act.

#### Textual Amendments

- F704** Words in Sch. 9 para. 4(1)(d) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(3)(d)** (with reg. 1(2), Sch. 4)
- F705** Words in Sch. 9 para. 4(2) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 231** (with Sch. 5)
- F706** Words in Sch. 9 para. 4(2)(c) substituted (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 26 para. 8(11)** (with reg. 1(2), Sch. 4)
- F707** Words in Sch. 9 para. 4(3) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 231** (with Sch. 5)
- F708** Words in Sch. 9 para. 4(4) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 231** (with Sch. 5)

### <sup>F709</sup>SCHEDULE 10

#### Textual Amendments

- F709** Sch. 10 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(q), **Sch. 28** (with regs. 1(2), 109(2), Sch. 4)

### SCHEDULE 11

Section 93.

#### WATER PROTECTION ZONE ORDERS

##### *Application for consent*

- 1 (1) Where the [<sup>F710</sup>appropriate agency] applies to the Secretary of State for an order under section 93 of this Act, it shall—
- (a) submit to the Secretary of State a draft of the order applied for;
  - (b) publish a notice with respect to the application, at least once in each of two successive weeks, in one or more newspapers circulating in the locality proposed to be designated as a water protection zone by the order;
  - (c) not later than the date on which that notice is first published serve a copy of the notice on every local authority and water undertaker whose area includes the whole or any part of that locality; and
  - (d) publish a notice in the London Gazette which-



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- (i) states that the draft order has been submitted to the Secretary of State;
  - (ii) names every local authority on whom a notice is required to be served under this paragraph;
  - (iii) specifies a place where a copy of the draft order and of any relevant map or plan may be inspected; and
  - (iv) gives the name of every newspaper in which the notice required by virtue of paragraph (b) above was published and the date of an issue containing the notice.
- (2) The notice required by virtue of sub-paragraph (1)(b) above to be published with respect to an application for an order shall—
  - (a) state the general effect of the order applied for;
  - (b) specify a place where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable times during the period of twenty-eight days beginning with the date of the first publication of the notice; and
  - (c) state that any person may, within that period, by notice to the Secretary of State object to the making of the order.

#### Textual Amendments

**F710** Words in Sch. 11 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 311\(a\)](#) (with Sch. 7)

#### *Supply of copies of draft orders*

- 2 Where the [<sup>F710</sup>appropriate agency] has applied for an order under section 93 of this Act, it shall, at the request of any person and on payment by that person of such charge (if any) as the [<sup>F710</sup>appropriate agency] may reasonably require, furnish that person with a copy of the draft order submitted to the Secretary of State under paragraph 1 above.

#### Textual Amendments

**F710** Words in Sch. 11 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 311\(a\)](#) (with Sch. 7)

#### *Modifications of proposals*

- 3 (1) On an application for an order under section 93 of this Act, the Secretary of State may make the order either in the terms of the draft order submitted to him or, subject to sub-paragraph (2) below, in those terms as modified in such manner as he thinks fit, or may refuse to make an order.
- (2) The Secretary of State shall not make such a modification of a draft order submitted to him as he considers is likely adversely to affect any persons unless he is satisfied that the [<sup>F710</sup>appropriate agency] has given and published such additional notices, in such manner, as the Secretary of State may have required.

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- (3) Subject to sub-paragraph (2) above and to the service of notices of the proposed modification on such local authorities as appear to him to be likely to be interested in it, the modifications that may be made by the Secretary of State of any draft order include any modification of the area designated by the draft order as a water protection zone.

**Textual Amendments**

**F710** Words in Sch. 11 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(a)** (with Sch. 7)

*Consideration of objections etc.*

- 4 Without prejudice to [<sup>F711</sup>section 53 of the 1995 Act (inquiries and other hearings)], where an application for an order under section 93 of this Act has been made, the Secretary of State may, if he considers it appropriate to do so, hold a local inquiry before making any order on the application.

**Textual Amendments**

**F711** Words in Sch. 11 para. 4 substituted (1.4.1996) by [1995 c. 25, s. 120\(1\)](#), **Sch. 22 para. 184** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**

<sup>F712</sup>SCHEDULE 12

Section 94.

**Textual Amendments**

**F712** Sch. 12 repealed (22.12.2009) by [Water Resources Act 1991 \(Amendment\) \(England and Wales\) Regulations 2009 \(S.I. 2009/3104\)](#), regs. 1(c), 4 (with reg. 7)

<sup>F713</sup>SCHEDULE 13

Section 103.

**Textual Amendments**

**F713** Sch. 13 repealed (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), Sch. 26 para. 8(2)(r), **Sch. 28** (with reg. 1(2), Sch. 4)

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## SCHEDULE 14

Section 108.

### ORDERS TRANSFERRING MAIN RIVER FUNCTIONS TO THE [F714 APPROPRIATE AGENCY]

#### Textual Amendments

**F714** Words in Sch. 14 heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(b)** (with Sch. 7)

#### *Procedure on application for order*

- 1 As soon as any scheme under section 108 of this Act has been submitted to one of the Ministers, the [F715 appropriate agency] shall—
- (a) send copies of the scheme to every internal drainage board, local authority, navigation authority, harbour authority and conservancy authority affected by it; and
  - (b) publish, in one or more newspapers circulating in the area affected by the scheme, a notice stating—
    - (i) that the scheme has been submitted to that Minister;
    - (ii) that a copy of it is open to inspection at a specified place; and
    - (iii) that representations with respect to the scheme may be made to that Minister at any time within one month after the publication of the notice.

#### Textual Amendments

**F715** Words in Sch. 14 para. 1 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(b)** (with Sch. 7)

#### *Order making procedure etc.*

- 2 (1) Before either of the Ministers makes an order under section 108 of this Act, he shall cause notice of—
- (a) the intention to make it;
  - (b) the place where copies of the draft order may be inspected and obtained; and
  - (c) the period within which, and the manner in which, objections to the draft order may be made,
- to be published in the London Gazette and in such other manner as he thinks best adapted for informing persons affected and to be sent to the persons specified in sub-paragraph (2) below.
- (2) The persons referred to in sub-paragraph (1) above are—
- (a) every county council [F716, county borough council] or London borough council in whose area any part of the area proposed to be affected by the order is situated and, if any part of that area is situated in the City of London, the Common Council of the City of London;
  - (b) the [F717 appropriate agency] and every drainage body, navigation authority, harbour authority or conservancy authority that is known to the Minister in

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question to be exercising jurisdiction within the area proposed to be affected by the order.

- (3) In sub-paragraph (2) above “drainage body” has the same meaning as in section 108 of this Act.

#### **Textual Amendments**

**F716** Words in Sch. 14 para. 2(2)(a) inserted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 3(8)** (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

**F717** Words in Sch. 14 para. 2 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 311(b)** (with Sch. 7)

#### *Determination of whether to make order*

- 3 (1) Before either of the Ministers makes an order under section 108 of this Act he—
- (a) shall consider any objections duly made to the draft order; and
  - (b) may, in any case, cause a public local inquiry to be held with respect to any objections to the draft order.
- (2) Each of the Ministers may, in making an order under section 108 of this Act, make such modifications in the terms of the draft as appear to him to be desirable and may confirm the scheme to which the order relates either with or without modifications.

#### *Notice of orders*

- 4 As soon as may be after an order under section 108 of this Act has effect one of the Ministers shall publish in the London Gazette, and in such other manner as he thinks best adapted for informing persons affected, a notice—
- (a) stating that the order has come into force; and
  - (b) naming a place where a copy of it may be seen at all reasonable hours.

#### *Challenge to orders*

- 5 (1) If any person aggrieved by an order under section 108 of this Act desires to question its validity on the ground—
- (a) that it is not within the powers of this Act; or
  - (b) that any requirement of this Act has not been complied with,
- he may, within six weeks of the date of the publication of the notice mentioned in paragraph 4 above, make an application for the purpose to the High Court.
- (2) Where an application is duly made to the High Court under this paragraph, the High Court, if satisfied—
- (a) that the order is not within the powers of this Act; or
  - (b) that the interests of the applicant have been substantially prejudiced by any requirements of this Act not having been complied with,
- may quash the order either generally or in so far as it affects the applicant.
- (3) Except by leave of the Court of Appeal, no appeal shall lie to the <sup>F718</sup>Supreme Court] from a decision of the Court of Appeal in proceedings under this paragraph.

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- (4) Subject to the preceding provisions of this paragraph an order under section 108 of this Act shall not at any time be questioned in any legal proceedings whatsoever.

#### Textual Amendments

**F718** Words in Sch. 14 para. 5(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 55](#); S.I. 2009/1604, art. 2(d)

#### *Power to make regulations for purposes of Schedule etc.*

- 6 The Ministers may make regulations in relation to—
- (a) the publication of notices under paragraph 2 or 4 above;
  - (b) the holding of public local inquiries under this Schedule and procedure at those inquiries; and
  - (c) any other matters of procedure respecting the making of orders under section 108 of this Act.

## SCHEDULE 15

Sections 135 and 138.

### SUPPLEMENTAL PROVISIONS WITH RESPECT TO DRAINAGE CHARGES

#### *Raising of drainage charge*

- 1 (1) A drainage charge—
- (a) shall be raised by the [<sup>F719</sup>appropriate agency] in writing under the common seal of the [<sup>F719</sup>appropriate agency]; and
  - (b) shall be deemed to be raised on the date on which a resolution is passed by the [<sup>F719</sup>appropriate agency] authorising their seal to be affixed to the charge.
- (2) Every drainage charge shall be raised for a year ending on 31st March and shall be raised before or during the year for which it is raised.
- (3) Without prejudice to their powers by virtue of section 112 of this Act, the Ministers shall each have power by regulations to prescribe the forms of drainage charges and of demands for drainage charges.

#### Textual Amendments

**F719** Words in Sch. 15 paras. 1-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\), art. 1\(2\), Sch. 2 para. 311\(e\)](#) (with Sch. 7)

#### *Publication of drainage charge*

- 2 (1) A drainage charge shall not be valid unless notice of the charge is given by the [<sup>F719</sup>appropriate agency] in accordance with sub-paragraph (2) below within ten days of the date on which it is raised.
- (2) The notice must—

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- (a) state the amount of the charge and the date on which it was raised; and
- (b) be published in one or more newspapers circulating in the area in respect of which the charge was raised.

#### Textual Amendments

**F719** Words in Sch. 15 paras. 1-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(c)** (with Sch. 7)

#### *Occupiers liable for drainage charge*

- 3 (1) Subject to paragraphs 4 and 5 below—
- (a) drainage charges shall be levied on the occupiers of chargeable land in [<sup>F720</sup>the flood risk management region] or, as the case may be, the designated area; and
  - (b) sub-paragraphs (2) to (4) below shall have effect with respect to the assessment of persons to a drainage charge with respect to any land (“the relevant land”) and their liability in regard to the charge.
- (2) A drainage charge shall be assessed on the person who at the date of the raising of the charge is the occupier of the relevant land.
- (3) The full amount of a drainage charge may be recovered by the [<sup>F719</sup>appropriate agency] from any person who is the occupier of the relevant land at any time during the period for which the charge is raised; but a person who is in occupation of the relevant land for part only of the period for which the charge is raised shall be liable, by virtue of sub-paragraph (4) below, to bear a proportionate part only of the charge.
- (4) If a person who is in occupation of the relevant land for part only of a period for which a drainage charge is raised is required under sub-paragraph (3) above to pay the full amount of the charge, he may (subject to any agreement to the contrary) recover, from any other person who has been in occupation of the land for part of that period, the amount which that other person is liable to bear.

#### Textual Amendments

**F719** Words in Sch. 15 paras. 1-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(c)** (with Sch. 7)

**F720** Words in Sch. 15 para. 3(1)(a) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 14**

#### *Cases where identity of occupiers in doubt*

- 4 (1) The [<sup>F719</sup>appropriate agency] may serve on the owner of any land a notice requiring him to state in writing the name and address of any person known to him as being an occupier of that land.
- (2) The owner of any land shall be guilty of an offence if—
- (a) he fails without reasonable excuse to comply with a notice under sub-paragraph (1) above;

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- (b) he makes any statement in respect of the information required by such a notice which he knows to be false in a material particular; or
  - (c) he recklessly makes any statement in respect of the information required by such a notice which is false in a material particular.
- (3) A person guilty of an offence under sub-paragraph (2) above shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale; and a person convicted by virtue of paragraph (a) of that sub-paragraph shall be liable to a further conviction by virtue of that paragraph if, after conviction, he continues without reasonable excuse [<sup>F721</sup>to fail] to comply with the notice in question.
- (4) Where the name of any person liable to be assessed to any drainage charge is not known to the [<sup>F719</sup>appropriate agency], it shall be sufficient to assess him to the charge by the description of the “occupier” of the premises (naming them) in respect of which the assessment is made, without further name or description.
- (5) For the purposes of this Schedule the owner of any land shall be deemed to be its occupier during any period during which it is unoccupied.
- (6) Sub-paragraphs (1) to (3) above shall be without prejudice to the provisions of Part VIII of this Act.

#### Textual Amendments

**F719** Words in Sch. 15 paras. 1-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 311\(e\)](#) (with Sch. 7)

**F721** Words in Sch. 15 para. 4(3) inserted (21.9.1995) by [1995 c. 25](#), s. 120(1), [Sch. 22 para. 187\(1\)](#) (with ss. 7(6), 115, 117); [S.I. 1995/1983](#), art. 3

#### *Arrangements for owner of land to pay drainage charge*

- 5 (1) Subject to paragraph 6 below, the [<sup>F719</sup>appropriate agency] may make arrangements with the owner of any chargeable land for any drainage charges which may be raised by the [<sup>F719</sup>appropriate agency] for any period in respect of the land to be levied on the owner, instead of on the occupier of the land.
- (2) Where arrangements under this paragraph are made—
- (a) the charges in question shall be levied on the owner, instead of on the occupier; and
  - (b) any reference to an occupier in the provisions of this Schedule (except in this paragraph and paragraph 6 below) shall be construed accordingly.
- (3) Subject to sub-paragraph (4) below, where in pursuance of any arrangements under this paragraph the owner of any land pays drainage charges in respect of the land to the [<sup>F719</sup>appropriate agency] either—
- (a) before the end of the period of two months beginning with the date of the service on him of the demand for the charges; or
  - (b) before the end of one-half of the period for which the charges are raised,
- the [<sup>F719</sup>appropriate agency] shall make to him an allowance equal to ten per cent. of the full amount of the charges.

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- (4) No allowance shall be made under sub-paragraph (3) above in respect of charges which, apart from this paragraph, are payable for any period by the owner in pursuance of paragraph 4(5) above.
- (5) Where arrangements are made under this paragraph, it shall be the duty of the [<sup>F719</sup>appropriate agency] to give notice of the arrangements, forthwith after they are made, to the occupier of the land affected by them.
- (6) The owner of any land who is a party to any arrangements under this paragraph in respect of the land may recover from the occupier of the land a sum equal to the amount of any drainage charges in respect of the land which, apart from the arrangements, would be payable by the occupier.

#### Textual Amendments

**F719** Words in Sch. 15 paras. 1-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(c)** (with Sch. 7)

#### *Power of occupier to prevent arrangements under paragraph 5*

- 6 (1) The occupier of any chargeable land may, by notice given to the [<sup>F719</sup>appropriate agency], determine—
  - (a) that no arrangements under paragraph 5 above shall be made in respect of the land; and
  - (b) that any such arrangements previously made shall cease to have effect so far as they relate to the land and any drainage charge to be raised for a period beginning after the date on which the notice takes effect;
 and may, by a notice so given, revoke any determination under this sub-paragraph so far as it prohibits the making of any such arrangements in respect of the land.
- (2) A notice under sub-paragraph (1) above shall take effect on the day following that on which it is given to the [<sup>F719</sup>appropriate agency].
- (3) Where notice is given to the [<sup>F719</sup>appropriate agency] under sub-paragraph (1) above, it shall be the duty of the [<sup>F719</sup>appropriate agency] to send a copy of the notice to the owner of the land to which it relates.

#### Textual Amendments

**F719** Words in Sch. 15 paras. 1-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(c)** (with Sch. 7)

#### *Assessment of chargeable land to drainage charge*

- 7 (1) Where land is chargeable land during part only of the year for which a drainage charge is raised, a proportionate part only of the charge shall be payable in respect of that land; and any amount overpaid shall be repaid.
- (2) Where the area of chargeable land in respect of which, apart from this sub-paragraph, a sum is payable by any person by way of a drainage charge consists of or includes



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a fraction of a hectare, then for the purpose of calculating that sum the fraction shall be disregarded if it is less than one-half and treated as one hectare in any other case.

*Partial exemption of commercial woodlands*

- 8 (1) The sum payable by way of a drainage charge in respect of chargeable land consisting of commercial woodlands shall be calculated as if the area of the land were one-fifth of its actual area.
- (2) In the application of paragraph 7(2) above to chargeable land to which sub-paragraph (1) above applies the area ascertained in pursuance of sub-paragraph (1) above (and not the area of which it is one-fifth) shall be treated as the area in relation to which paragraph 7(2) above has effect.

*Returns with respect to land*

- 9 (1) The [F722appropriate agency] may serve on any person appearing to it to be the occupier of any land a notice requiring him to furnish a return under sub-paragraph (2) below to the [F722appropriate agency] within twenty-eight days beginning with the date of service of the notice on him.
- (2) The return required of a person by a notice under sub-paragraph (1) above is a return, in writing and in such form as may be specified in the notice, containing such particulars as may reasonably be required for the purpose of enabling the [F722appropriate agency] to determine—
- (a) how much (if any) of the land occupied by that person is chargeable land; and
  - (b) how much (if any) consists of commercial woodlands.
- (3) If any person on whom notice has been served under sub-paragraph (1) above—
- (a) fails without reasonable excuse to comply with the notice;
  - (b) in a return made in pursuance of such a notice, makes any statement which he knows to be false in a material particular; or
  - (c) in any such return recklessly makes any statement which is false in a material particular,
- he shall be guilty of an offence
- (4) A person guilty of an offence under sub-paragraph (3) above shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale; and a person convicted by virtue of paragraph (a) of that sub-paragraph shall be liable to a further conviction by virtue of that paragraph if, after conviction, he continues without reasonable excuse [F723to fail] to comply with the notice in question.
- (5) This paragraph shall be without prejudice to the provisions of Part VIII of this Act.

**Textual Amendments**

**F722** Words in Sch. 15 paras. 9-13 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 311\(e\)](#) (with Sch. 7)

**F723** Words in Sch. 15 para. 9(4) inserted (21.9.1995) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 187\(1\)](#) (with ss. 7(6), 115, 117); [S.I. 1995/1983, art. 3](#)

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*Power to correct erroneous assessments etc.*

- 10 (1) The [<sup>F722</sup>appropriate agency] may, as respects any drainage charge raised by it for the current or the preceding year, make such amendments in any demands or other documents relating to the charge as appear to the [<sup>F722</sup>appropriate agency] necessary in order to make the raising, levying and collection of the charge conform with this Act.
- (2) In particular, the [<sup>F722</sup>appropriate agency] may—
- (a) correct any clerical or arithmetical error;
  - (b) correct any erroneous insertions or omissions or any misdescriptions;
  - (c) make such additions or corrections as appear to the [<sup>F722</sup>appropriate agency] to be necessary by reason of any change in the occupation of any chargeable land or any property ceasing to be chargeable land.
- (3) The [<sup>F722</sup>appropriate agency] shall serve a notice of any amendment made by the [<sup>F722</sup>appropriate agency] in pursuance of this paragraph on the occupier of all land affected thereby.
- (4) Where an amendment is made in pursuance of this paragraph—
- (a) any amount overpaid shall be repaid or allowed; and
  - (b) any amount underpaid may be recovered as if it were arrears of the charge.

**Textual Amendments**

**F722** Words in Sch. 15 paras. 9-13 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(c)** (with Sch. 7)

*Appeals against demands for drainage charges*

- 11 (1) If any person is aggrieved by—
- (a) a demand for a drainage charge made on him as the occupier of chargeable land; or
  - (b) an amendment of such a demand,
- he may appeal to the county court <sup>F724</sup>... .
- (2) Notice of appeal under this paragraph, specifying the grounds of appeal, must be given within the required period—
- (a) to the court to which the appeal is made;
  - (b) to the [<sup>F722</sup>appropriate agency]; and
  - (c) if the appeal relates to land not in the occupation of the appellant, to the occupier of the land.
- (3) For the purposes of sub-paragraph (2) above the required period is twenty-eight days after the date on which the demand is made or, as the case may be, notice of the amendment is served on the appellant.
- (4) On an appeal under this paragraph the court shall, as it thinks just, either confirm the demand or annul or modify it.

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#### Textual Amendments

- F722** Words in Sch. 15 paras. 9-13 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 311\(c\)](#) (with Sch. 7)
- F724** Words in [Sch. 15 para. 11\(1\)](#) omitted (22.4.2014) by virtue of [Crime and Courts Act 2013 \(c. 22\)](#), [s. 61\(3\)](#), [Sch. 9 para. 140](#); [S.I. 2014/954](#), [art. 2\(c\)](#) (with [art. 3](#)) (with transitional provisions and savings in [S.I. 2014/956](#), arts. 3-11)

#### *Recovery of drainage charges*

- 12 (1) Arrears of any drainage charge may be recovered by the [<sup>F722</sup>appropriate agency] in the same manner in which arrears of a non-domestic rate may be recovered under the <sup>M139</sup>Local Government Finance Act 1988 by a [<sup>F725</sup>billing authority] within the meaning of that Act.
- (2) Without prejudice to its powers by virtue of [<sup>F726</sup>section 37 of, and paragraph 6 of Schedule 1 to, the 1995 Act], the [<sup>F722</sup>appropriate agency] may by resolution authorise any member or officer of the [<sup>F722</sup>appropriate agency], either generally or in respect of particular proceedings—
- (a) to institute or defend on its behalf any proceedings in relation to a drainage charge; or
  - (b) notwithstanding that he is not qualified to act as a solicitor, to appear on the [<sup>F722</sup>appropriate agency's] behalf in any proceedings before a magistrates' court for the issue of a [<sup>F727</sup>warrant of control] for failure to pay a drainage charge.
- (3) In proceedings for the recovery of arrears of a drainage charge the defendant shall not be entitled to raise by way of defence any matter which might have been raised on an appeal under paragraph 11 above.
- (4) The [<sup>F722</sup>appropriate agency] shall not be required to demand or enforce payment of a drainage charge in any case where the amount of the charge is insufficient to justify the expense of collection.

#### Textual Amendments

- F722** Words in Sch. 15 paras. 9-13 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 311\(c\)](#) (with Sch. 7)
- F725** Words in Sch. 15 para. 12(1) substituted (1.8.1992 subject to savings in [S.I. 1992/1755](#), [art. 2\(2\)](#)) by [Local Government Finance Act 1992 \(c. 14\)](#), [s. 117\(1\)](#), [Sch. 13 para. 98](#) (with [s. 118\(1\)\(2\)\(4\)](#); [S.I. 1992/1755](#), [art. 2\(1\)](#))
- F726** Words in Sch. 15 para. 12(2) substituted (1.4.1996) by [1995 c. 25](#), [s. 120\(1\)](#), [Sch. 22 para. 187\(2\)](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3](#)
- F727** Words in [Sch. 15 para. 12\(2\)\(b\)](#) substituted (6.4.2014) by [Tribunals, Courts and Enforcement Act 2007 \(c. 15\)](#), [s. 148](#), [Sch. 13 para. 99](#) (with [s. 89](#)); [S.I. 2014/768](#), [art. 2\(1\)\(b\)](#)

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- M139** 1988 c. 41.

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*Use of certain authorities as agents for assessment, collection etc. of drainage charges*

- 13 (1) The [F722appropriate agency] and any relevant authority may enter into agreements for—
- (a) the doing by the relevant authority, as agents of the [F722appropriate agency], of anything required for the purpose of the assessment to and recovery of a drainage charge in respect of any relevant land; and
  - (b) the making by the [F722appropriate agency] to the relevant authority of payments in respect of anything so done.
- (2) The [F722appropriate agency] may make arrangements with either of the Ministers for the exercise by him on behalf of the [F722appropriate agency], in such cases as may be determined in pursuance of the arrangements, of the powers conferred on the [F722appropriate agency] by paragraph 9 above.
- (3) Any arrangements under sub-paragraph (2) above shall contain provision for the reimbursement by the [F722appropriate agency] of any expenses incurred by the Minister in question in pursuance of the arrangements.
- (4) In this paragraph—
- “relevant authority” means the council of any district or London borough [F728or Welsh county or county borough]or any internal drainage board; and
- “relevant land”, in relation to an agreement with any relevant authority, means—
- (a) where the relevant authority is a district or London borough [F728or Welsh county or county borough]council, the chargeable land within the council’s area; and
  - (b) where the relevant authority is an internal drainage board, such land as may be specified in the agreement.

**Textual Amendments**

**F722** Words in Sch. 15 paras. 9-13 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(c)** (with Sch. 7)

**F728** Words in Sch. 15 para. 13(4) inserted (1.4.1996) by [1994 c. 19, s. 22\(5\)](#), **Sch. 11 Pt. I para. 3(9)** (with ss. 54(4)(7), 55(5), [Sch. 17 paras. 22\(1\), 23\(2\)](#)); [S.I. 1996/396](#), art. 3, **Sch. 1**

SCHEDULE 16

Section 137.

SCHEMES IMPOSING SPECIAL DRAINAGE CHARGES

*Submission of scheme*

- 1 (1) Before submitting a special charges scheme to either of the Ministers, the [F729appropriate agency] shall consult organisations appearing to it to represent the interests of persons engaged in agriculture in the area designated in the scheme.
- (2) As soon as any special charges scheme has been submitted to either of the Ministers, the [F729appropriate agency] shall—

*Status: Point in time view as at 17/09/2018.*

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- (a) send copies of the scheme to—
    - (i) the council of any county, [<sup>F730</sup>county borough]district or London borough wholly or partly within the relevant area;
    - (ii) the drainage board for any internal drainage district within the relevant area; and
    - (iii) every organisation appearing to the [<sup>F729</sup>appropriate agency] to represent the interests of persons engaged in agriculture in the relevant area;
  - and
  - (b) publish, in one or more newspapers circulating in the area affected by the scheme, a notice stating—
    - (i) that the scheme has been submitted to that Minister;
    - (ii) that a copy of it is open to inspection at a specified place; and
    - (iii) that representations with respect to the scheme may be made to that Minister at any time within one month after the publication of the notice.
- (3) Where the [<sup>F729</sup>appropriate agency] submit a special charges scheme which designates any watercourse wholly or partly within an internal drainage district, then (unless the [<sup>F729</sup>appropriate agency] is the drainage board for that district) the scheme must be accompanied either—
- (a) by a statement of the drainage board for that district that they have consented to the designation; or
  - (b) by a statement that they have not consented thereto and a further statement setting out the reasons why the watercourse should nevertheless be designated for the purposes of section 137 of this Act.
- (4) For the purposes of sub-paragraph (2) above “the relevant area” is the area designated in the scheme.

#### Textual Amendments

**F729** Words in Sch. 16 paras. 1-3 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 311(d) (with Sch. 7)

**F730** Words in Sch. 16 para. 1(2)(a)(i) inserted (1.4.1996) by 1994 c. 19, s. 22(5), Sch. 11 Pt. I para. 3(10)(a) (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, Sch. 1

#### Confirmation of scheme

- 2
- (1) Subject to the following provisions of this Schedule the Minister to whom a special charges scheme has been submitted may by order made by statutory instrument confirm the scheme either with or without modifications.
  - (2) Neither of the Ministers shall confirm a special charges scheme unless he is satisfied that the scheme is reasonable and financially sound, having regard to all the circumstances, and in particular to any contributions from local authorities and internal drainage boards which, if the scheme is confirmed, are likely to be available to the [<sup>F729</sup>appropriate agency] in addition to the special drainage charge authorised by the scheme.

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- (3) An order confirming a special charges scheme may contain provisions with respect to the persons by whom all or any of the expenses incurred by either of the Ministers or by other persons in connection with the making or confirmation of the order, or the making of the scheme, are to be borne.

#### Textual Amendments

**F729** Words in Sch. 16 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(d)** (with Sch. 7)

#### *Notice of proposed order*

- 3 (1) Before either of the Ministers makes an order confirming a special charges scheme he shall cause notice of—
- (a) the intention to make it;
  - (b) the place where copies of the draft order may be inspected and obtained; and
  - (c) the period within which, and the manner in which, objections to the draft order may be made,
- to be published in the London Gazette and in such other manner as he thinks best adapted for informing persons affected and to be sent to the persons specified in sub-paragraph (2) below.
- (2) The persons referred to in sub-paragraph (1) above are—
- (a) every county council [<sup>F731</sup>, county borough council] or London borough council in whose area any part of the area proposed to be affected by the order is situated and, if any part of that area is situated in the City of London, the Common Council of the City of London; and
  - (b) the [<sup>F729</sup>appropriate agency] and every drainage body, navigation authority, harbour authority or conservancy authority that is known to the Minister in question to be exercising jurisdiction within the area proposed to be affected by the order.
- (3) In sub-paragraph (2) above “drainage body” has the same meaning as in section 108 of this Act.

#### Textual Amendments

**F729** Words in Sch. 16 paras. 1-3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(d)** (with Sch. 7)

**F731** Words in Sch. 16 para. 3(2)(a) inserted (1.4.1996) by [1994 c. 19, s. 22\(5\)](#), **Sch. 11 Pt. I para. 3(10)(b)** (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1), 23(2)); [S.I. 1996/396](#), art. 3, **Sch. 1**

#### *Determination of whether to make order*

- 4 (1) Before either of the Ministers makes an order confirming a special charges scheme, he—
- (a) shall consider any objections duly made to the draft order; and
  - (b) may, in any case, cause a public local inquiry to be held with respect to any objections to the draft order.

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- (2) Each of the Ministers shall have power, in making an order confirming a special charges scheme, to make such modifications in the terms of the draft as appear to him to be desirable.

*Procedure and other matters after the making of an order*

- 5 (1) After either of the Ministers has made an order confirming a special charges scheme, the order (together with a notice under sub-paragraph (2) below) shall be published in such manner as he thinks best adapted for informing the persons affected.
- (2) A notice under this sub-paragraph is a notice—
- (a) that the Minister in question has made the order; and
  - (b) that the order will become final and have effect unless, within such period of not less than thirty days as may be specified in the notice, a memorial praying that the order shall be subject to special parliamentary procedure is presented to that Minister, by a person who is affected by the order and has such interest as may be prescribed by regulations made by one of the Ministers as being sufficient for the purpose.

*Orders subject to special parliamentary procedure*

- 6 (1) If—
- (a) no such memorial as is mentioned in paragraph 5(2) above has been presented within the period so mentioned in respect of any order confirming a special charges scheme; or
  - (b) every such memorial has been withdrawn,
- the Minister who made the order shall confirm the order and it shall thereupon have effect.
- (2) If such a memorial has been presented in respect of such an order and has not been withdrawn, the order shall be subject to special parliamentary procedure.
- (3) An order confirming a special charges scheme shall in any event be subject to special parliamentary procedure if the Minister who makes the order so directs.
- (4) The Minister who makes an order confirming a special charges scheme may, at any time before it has been laid before Parliament, revoke, either wholly or partially, any order that is subject to special parliamentary procedure.

*Notice of unconfirmed orders*

- 7 As soon as may be after an unconfirmed order has effect, the Minister who made the order shall publish in the London Gazette, and in such other manner as he thinks best adapted for informing persons affected, a notice—
- (a) stating that the order has come into force; and
  - (b) naming a place where a copy of it may be seen at all reasonable hours.

*Challenge to unconfirmed orders*

- 8 (1) If any person aggrieved by an unconfirmed order desires to question its validity on the ground—
- (a) that it is not within the powers of this Act; or

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- (b) that any requirement of this Act has not been complied with, he may, within six weeks of the relevant date, make an application for the purpose to the High Court.
- (2) Where an application is duly made to the High Court under this paragraph, the High Court, if satisfied—
- (a) that the order is not within the powers of this Act; or
- (b) that the interests of the applicant have been substantially prejudiced by any requirements of this Act not having been complied with,
- may quash the order either generally or in so far as it affects the applicant.
- (3) Except by leave of the Court of Appeal, no appeal shall lie to the [<sup>F732</sup>Supreme Court] from a decision of the Court of Appeal in proceedings under this paragraph.
- (4) Subject to the preceding provisions of this paragraph an unconfirmed order shall not at any time be questioned in any legal proceedings whatsoever.
- (5) In this paragraph “the relevant date”, in relation to an order, means—
- (a) where the order is subject to special parliamentary procedure, the date on which the order becomes operative under the <sup>M140</sup>Statutory Orders (Special Procedure) Act 1945;
- (b) where the order is not subject to special parliamentary procedure, the date of the publication of the notice mentioned in paragraph 7 above.

#### Textual Amendments

**F732** Words in Sch. 16 para. 8(3) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), s. 148\(1\), Sch. 9 para. 55](#); [S.I. 2009/1604, art. 2\(d\)](#)

#### Marginal Citations

**M140** 1945 c. 18 (9 & 10 Geo 6).

#### *Power to make regulations for purposes of Schedule*

- 9 The Ministers may make regulations in relation to—
- (a) the publication of notices under this Schedule;
- (b) the holding of public local inquiries under this Schedule and procedure at those inquiries; and
- (c) any other matters of procedure respecting the making of orders confirming a special charges scheme.

#### *Interpretation*

- 10 (1) In this Schedule—
- “special charges scheme” means a scheme under section 137 of this Act; and
- “unconfirmed order” means an order confirming a special charges scheme, other than one which is itself confirmed under section 6 of the Statutory Orders (Special Procedure) Act 1945.



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- (2) Section 113 of this Act shall apply for the interpretation of this Schedule as it applies for the interpretation of Part IV of this Act.

## SCHEDULE 17

Section 143.

### ORDERS WITH RESPECT TO NAVIGATION TOLLS

#### *Orders to be made by statutory instrument*

- 1 The power to make an order under section 143 of this Act shall be exercisable by statutory instrument.

#### *Inquiries*

- 2 (1) The Secretary of State may hold inquiries for the purposes of section 143 of this Act as if those purposes were purposes of the <sup>M141</sup>Ministry of Transport Act 1919; and section 20 of that Act (power to hold inquiries) shall have effect accordingly.
- (2) The Secretary of State may make such order as to the payment of costs incurred by him in connection with any such inquiry as he may think just.

#### **Marginal Citations**

**M141** 1919 c. 50.

#### *Notice of order*

- 3 (1) After the Secretary of State has made an order under section 143 of this Act, the order, together with a notice under sub-paragraph (2) below, shall be published in such manner as he thinks best adapted for informing the persons affected.
- (2) A notice under this sub-paragraph is a notice—
- (a) that the Secretary of State has made the order; and
  - (b) that the order will become final and have effect unless, within such period of not less than thirty days as may be specified in the notice, a memorial praying that the order shall be subject to special parliamentary procedure is presented to the Secretary of State, by a person who is affected by the order and has such an interest as may be prescribed as being sufficient for the purpose.

#### *Orders subject to special parliamentary procedure*

- 4 (1) If—
- (a) no such memorial as is mentioned in paragraph 3(2) above has been presented within the period so mentioned in respect of any order under section 143 of this Act; or
  - (b) every such memorial has been withdrawn,
- the Secretary of State shall confirm the order and it shall thereupon have effect.

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- (2) If such a memorial has been presented in respect of such an order and has not been withdrawn, the order shall be subject to special parliamentary procedure.
- (3) An order under section 143 of this Act shall, in any event, be subject to special parliamentary procedure if the Secretary of State so directs.
- (4) The Secretary of State may, at any time before it has been laid before Parliament, revoke, either wholly or partially, any order under section 143 of this Act that is subject to special parliamentary procedure.

## SCHEDULE 18

Section 154.

### MODIFICATION OF COMPENSATION PROVISION ETC IN RELATION TO THE CREATION OF NEW RIGHTS

#### *Compensation enactments*

- 1 Subject to the following provisions of this Schedule, the enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under section 154 of this Act of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

#### *Adaptation of the Compulsory Purchase Act 1965*

- 2 (1) The Compulsory Purchase Act 1965 (in the following provisions of this Schedule referred to as “the 1965 Act”) shall have effect with the modifications necessary to make it apply to the compulsory acquisition under section 154 of this Act of a right by the creation of a new right as it applies to the compulsory acquisition under that section of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—
  - (a) the right acquired or to be acquired; or
  - (b) the land over which the right is or is to be exercisable.
- (2) Without prejudice to the generality of sub-paragraph (1) above, Part I of the 1965 Act shall apply in relation to the compulsory acquisition under section 154 of this Act of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

#### *Section 7 of the 1965 Act*

- 3 For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—
  - “7 In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously

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affecting that other land by the exercise of the powers conferred by this or the special Act.”

#### *Section 8 of the 1965 Act*

[<sup>F733</sup>4 Section 8(1) of the Compulsory Purchase Act 1965 has effect as if references to acquiring land were to acquiring a right in the land, and Schedule 2A to that Act is to be read as if, for that Schedule, there were substituted—

#### “SCHEDULE 2A

#### COUNTER-NOTICE REQUIRING PURCHASE OF LAND

##### *Introduction*

- 1 (1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over the whole or part of a house, building or factory.
- (2) But see section 2A of the Acquisition of Land Act 1981 (under which a compulsory purchase order can exclude from this Schedule land that is 9 metres or more below the surface).
- 2 In this Schedule “house” includes any park or garden belonging to a house.

##### *Counter-notice requiring purchase of land*

- 3 A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.
- 4 A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

##### *Response to counter-notice*

- 5 On receiving a counter-notice the acquiring authority must decide whether to—
  - (a) withdraw the notice to treat,
  - (b) accept the counter-notice, or
  - (c) refer the counter-notice to the Upper Tribunal.
- 6 The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).
- 7 If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.
- 8 If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.
- 9 If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

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### *Determination by Upper Tribunal*

- 10 On a referral under paragraph 7 the Upper Tribunal must determine whether the acquisition of the right would—
- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
  - (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.
- 11 In making its determination, the Upper Tribunal must take into account—
- (a) the effect of the acquisition of the right,
  - (b) the proposed use of the right, and
  - (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.
- 12 If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10 it must determine how much of the house, building or factory the authority ought to be required to take.
- 13 If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.
- 14 (1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.
- (2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.
- (3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”]

#### **Textual Amendments**

**F733** Sch. 18 para. 4 substituted (3.2.2017) by [Housing and Planning Act 2016 \(c. 22\)](#), s. 216(3), Sch. 17 paras. 6, 7; [S.I. 2017/75](#), reg. 3(g) (with reg. 5)

### *Effect of deed poll*

- 5 The following provisions of the 1965 Act (being provisions stating the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—
- (a) section 9(4) (refusal by owners to convey);
  - (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
  - (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

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(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land), shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

*Section 11 of the 1965 Act*

- 6 Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) shall be modified correspondingly.

*Section 20 of the 1965 Act*

- 7 Section 20 of the 1965 Act (protection for interests of tenants at will etc.) shall apply with the modifications necessary to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under section 154 of this Act of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

*Section 22 of the 1965 Act*

- 8 Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 19

Section 168.

ORDERS CONFERRING COMPULSORY WORKS POWERS

**Modifications etc. (not altering text)**

**C195** Sch. 19 applied (2.5.2006 for E. and 11.5.2006 for W.) by [The Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2(1), **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

**C196** Sch. 19 applied (2.5.2006 for E., 11.5.2006 for W.) by [Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), regs. 1(2)(4), 2(1), **Sch. Pt. 1**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

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### *Applications for orders*

- 1 (1) Where the [<sup>F734</sup>appropriate agency] applies to either of the Ministers for a compulsory works order, it shall—
- (a) submit to that Minister a draft of the order applied for;
  - (b) publish a notice with respect to the application, at least once in each of two successive weeks, in one or more newspapers circulating in each relevant locality;
  - (c) not later than the date on which that notice is first published—
    - (i) serve a copy of the notice on each of the persons specified in relation to the application in sub-paragraph (3) below; and
    - (ii) in the case of a draft order which would authorise the stopping-up or diversion of a footpath<sup>F735</sup>, bridleway or restricted byway], cause such a copy, together with a plan showing the general effect of the draft order so far as it relates to the footpath<sup>F735</sup>, bridleway or restricted byway], to be displayed in a prominent position at the ends of the part of the path or way to be stopped up or diverted;
- and
- (d) publish a notice in the London Gazette which—
    - (i) states that the draft order has been submitted to that Minister;
    - (ii) names every local authority on whom a notice is required to be served under this paragraph;
    - (iii) specifies a place where a copy of the draft order and of any relevant map or plan may be inspected; and
    - (iv) gives the name of every newspaper in which the notice required by virtue of paragraph (b) above was published and the date of an issue containing the notice.
- (2) The notice required by virtue of sub-paragraph (1)(b) above to be published with respect to an application for an order by the [<sup>F734</sup>appropriate agency] shall—
- (a) state the general effect of the order applied for;
  - (b) in the case of an application made wholly or partly for the purpose of enabling any discharges of water to be made—
    - (i) contain particulars of the proposed discharges, stating the purposes of the discharges and specifying each place of discharge;
    - (ii) specify the places at which the water to be comprised in the proposed discharges is to be taken and the treatment (if any) which the draft order proposes to require the water, or any of it, to receive before being discharged under the order; and
    - (iii) state the effect which, in the opinion of the [<sup>F734</sup>appropriate agency], the proposed discharges would have on the flow, level and quality of water in any inland waters or underground strata;
  - (c) specify a place where a copy of the draft order and of any relevant map or plan may be inspected by any person free of charge at all reasonable times during the period of twenty-eight days beginning with the date of the first publication of the notice; and
  - (d) state that any person may within that period, by notice to the Minister applied to, object to the making of the order.

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- (3) The persons mentioned in sub-paragraph (1)(c) above in relation to an application for a compulsory works order a draft of which has been submitted to either of the Ministers are—
- (a) every local authority whose area is or includes the whole or any part of a relevant locality and which is not [<sup>F736</sup>an English county] council;
  - (b) every water undertaker whose area is or includes the whole or any part of such a locality;
  - (c) every navigation authority, harbour authority and conservancy authority which would be affected by, or has functions in relation to any inland waters which would be affected by, any provision proposed to be made by the order;
  - [<sup>F737</sup>(d) every person who—
    - (i) is an owner, lessee, tenant (whatever the tenancy period) or occupier of any land in relation to which compulsory powers would become exercisable if the order were made in the terms of the draft order; or
    - (ii) who the water undertaker thinks is likely to be entitled to make a claim for compensation under section 10 of the Compulsory Purchase Act 1965 if the order is confirmed and the compulsory powers become exercisable, so far as he is known to the water undertaker after making diligent inquiry;]
  - (e) every person who has given notice to the [<sup>F734</sup>appropriate agency] requiring it to notify him of applications for compulsory works orders and has paid such reasonable charge as the [<sup>F734</sup>appropriate agency] may have required him to pay for being notified by virtue of this paragraph;
  - (f) such other persons as may be prescribed.
- (4) In this paragraph “relevant locality”, in relation to an application for an order, means—
- (a) any locality which would be affected by any provision proposed to be made by the order for the purpose of enabling any engineering or building operations to be carried out; and
  - (b) where provision is proposed to be made by the order for the purpose of enabling discharges of water to be made, each locality in which the place of any of the proposed discharges is situated or in which there appears to the [<sup>F734</sup>appropriate agency] to be any inland waters or underground strata the flow, level or quality of water in which may be affected by any of the proposed discharges.

#### Textual Amendments

- F734** Words in Sch. 19 paras. 1-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(e)** (with Sch. 7)
- F735** Words in Sch. 19 para. 1(1)(c)(ii) substituted (2.5.2006 for E., 11.5.2006 for W.) by [Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), reg. 1(2)(4), **Sch. Pt. I**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)
- F736** Words in Sch. 19 para. 1(3)(a) substituted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 3(11)** (with ss. 54(4)(7), 55(5), Sch. 17 paras. 22(1) 23(2)); S.I. 1996/396, art. 3, **Sch. 1**
- F737** Sch. 19 para. 1(3)(d) substituted (24.5.2007) by [Planning and Compulsory Purchase Act 2004 \(Corresponding Amendments\) Order 2007 \(S.I. 2007/1519\)](#), art. 1(1), **Sch. para. 9(a)** (with art. 1(3))

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### *Supply of copies of draft orders*

- 2 Where the [<sup>F734</sup>appropriate agency] is applying for a compulsory works order, it shall, at the request of any person and on payment by that person of such charge (if any) as the [<sup>F734</sup>appropriate agency] may reasonably require, furnish that person with a copy of any draft order submitted to either of the Ministers under paragraph 1 above and of any relevant map or plan.

#### **Textual Amendments**

**F734** Words in Sch. 19 paras. 1-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(e)** (with Sch. 7)

### *Powers on an application*

- 3 (1) On an application for a compulsory works order, the Minister or the Secretary of State may make the order either in the terms of the draft order submitted or, subject to sub-paragraphs (2) and (3) below, in those terms as modified in such manner as he thinks fit, or may refuse to make an order.
- (2) Neither of the Ministers shall make such a modification of a draft order as he considers is likely adversely to affect any persons unless he is satisfied that the [<sup>F734</sup>appropriate agency] has given and published such additional notices, in such manner, as he may have required.
- (3) Neither of the Ministers shall, unless all interested parties consent, make a compulsory works order so as to confer in relation to any land any powers of compulsory acquisition which would not have been conferred in relation to that land if the order were made in the terms of the draft order submitted under paragraph 1 above.
- (4) Where one of the Ministers refuses, on an application for a compulsory works order, to make an order, the [<sup>F734</sup>appropriate agency] shall, as soon as practicable after the refusal, notify the refusal to every person on whom it was, by virtue of paragraph 1(1)(c)(i) above, required to serve a copy of the notice with respect to the application.

#### **Textual Amendments**

**F734** Words in Sch. 19 paras. 1-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(e)** (with Sch. 7)

### *Consideration of objections etc.*

- 4 (1) If, where an application for a compulsory works order has been made, either of the Ministers receives any notice of an objection to it, before the end of the relevant period, from—
- (a) any person on whom a notice under paragraph 1 or 3 above is required to be served; or
  - (b) from any other person appearing to that Minister to be affected by the order as submitted or as proposed to be modified under paragraph 3 above,



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then, unless the objection is withdrawn, the Minister or the Secretary of State shall, before making the order, either cause a local inquiry to be held or afford to the objector and to the [<sup>F734</sup>appropriate agency] an opportunity of appearing before, and being heard by, a person appointed by him for the purpose.

- (2) Where any objection received by one of the Ministers as mentioned in subparagraph (1) above relates to any powers of compulsory acquisition, the Minister or the Secretary of State—
- (a) may require the objector to state in writing the grounds of his objection; and
  - (b) if he is satisfied that the objection relates exclusively to matters that can be dealt with in the assessment of compensation, may disregard the objection for the purposes of that subparagraph.
- (3) In this paragraph “the relevant period”, in relation to an application for any order, means the period ending with whichever is the later of—
- (a) the end of the period of twenty-eight days beginning with the date of the first publication of the notice published with respect to the application for the purposes of paragraph 1(1)(b) above; and
  - (b) the end of the period of twenty-five days beginning with the date of the publication in the London Gazette of the notice published for the purposes of the application by virtue of paragraph 1(1)(d) above,

together, in the case of an application for an order modifications to which have been proposed by the Minister considering the application, with any further periods specified with respect to the modifications in notices under paragraph 3(2) above.

#### Textual Amendments

**F734** Words in Sch. 19 paras. 1-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 311\(e\)](#) (with Sch. 7)

#### *Notice after making of order*

- 5 (1) As soon as practicable after a compulsory works order has been made, the [<sup>F734</sup>appropriate agency] shall—
- (a) publish a notice of the making of the order, at least once in each of two successive weeks, in one or more newspapers circulating in each relevant locality; and
  - (b) not later than the date on which that notice is first published—
    - (i) serve a copy of the notice on every person on whom the [<sup>F734</sup>appropriate agency] was, by virtue of paragraph 1(1)(c)(i) above, required to serve a copy of the notice with respect to the application for the order; and
    - (ii) in the case of an order authorising the stopping-up or diversion of a footpath<sup>F738</sup>, bridleway or restricted byway], cause such a copy, together with a plan showing the general effect of the order so far as it relates to the footpath<sup>F738</sup>, bridleway or restricted byway], to be displayed in a prominent position at the ends of the appropriate part of the path or way.

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- (2) The notice required by virtue of sub-paragraph (1)(a) above to be published with respect to a compulsory works order shall—
- (a) state the general effect of the order;
  - (b) in the case of an order made wholly or partly for the purpose of enabling any discharges of water to be made—
    - (i) contain particulars of the discharges, stating the purposes of the discharges and specifying each place of discharge;
    - (ii) specify the places at which the water to be comprised in the discharges is to be taken and the treatment (if any) which the order requires the water, or any of it, to receive before being discharged under the order; and
    - (iii) state the effect which, in the opinion of the applicant, the discharges would have on the flow, level and quality of water in any inland waters or underground strata; and
  - (c) specify a place where a copy of the order and of any relevant map or plan may be inspected by any person free of charge at all reasonable times.
- (3) Where a compulsory works order has been made, the [<sup>F734</sup>appropriate agency] shall, at the request of any person and on payment by that person of such charge (if any) as the [<sup>F734</sup>appropriate agency] may reasonably require, furnish that person with a copy of the order and of any relevant map or plan.
- (4) In this paragraph “relevant locality”, in relation to any compulsory works order, means—
- (a) any locality which is affected by any provision made by the order for the purpose of enabling any engineering or building operations to be carried out; and
  - (b) where provision is made by the order for the purpose of enabling discharges of water to be made, each locality in which the place of any of the discharges is situated or in which there appears to the [<sup>F734</sup>appropriate agency] to be any inland waters or underground strata the flow, level or quality of water in which may be affected by any of the discharges.

#### **Textual Amendments**

- F734** Words in Sch. 19 paras. 1-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 311\(e\)](#) (with Sch. 7)
- F738** Words in Sch. 19 para. 5(1)(b)(ii) substituted (2.5.2006 for E., 11.5.2006 for W.) by [Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), reg. 1(2)(4), Sch. Pt. I; [S.I. 2006/1172](#), art. 2(a)-(d) (with art. 3); [S.I. 2006/1279](#), art. 2(a)-(d) (with art. 3)

#### *Compulsory acquisition provisions*

- 6 (1) Without prejudice to the provisions of Schedule 23 to this Act—
- (a) Part I of the <sup>M142</sup>Compulsory Purchase Act 1965;
  - (b) [<sup>F739</sup>sections 2A and] 4 and Part III of, and Schedule 3 to, the <sup>M143</sup>Acquisition of Land Act 1981; and
  - (c) the enactments for the time being in force with respect to compensation for the compulsory purchase of land,

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shall apply in relation to so much of a compulsory works order as confers powers of compulsory acquisition as they apply in relation to a compulsory purchase order made by virtue of section 154 of this Act and, accordingly, shall so apply, where the case so requires, with the modifications made by Schedule 18 to this Act.

(2) Subject to the provisions of sub-paragraph (6) below, if any person aggrieved by a compulsory works order containing powers of compulsory acquisition, or by a certificate given under the special land provisions in connection with such an order, desires—

- (a) to question the validity of the order, or of any provision of the order, on the grounds that any powers of compulsory acquisition conferred by the order are not authorised by this Act to be so conferred, or that any of the relevant requirements have not been complied with in relation to the order; or
- (b) to question the validity of the certificate on the grounds that any of the relevant requirements have not been complied with in relation to the certificate,

he may make an application for the purpose to the High Court at any time before the end of the period of six weeks beginning with the date on which notice of the making of the order is first published in accordance with paragraph 5 above or, as the case may be, notice of the giving of the certificate is first published in accordance with the special land provisions.

(3) On any application under sub-paragraph (2) above with respect to any order or certificate, the High Court—

- (a) may by interim order suspend the operation of the order, or any provision of the order, or of the certificate (either generally or in so far as it affects any property of the applicant to the High Court) until the final determination of the proceedings; and
- (b) if satisfied—
  - (i) that any powers of compulsory acquisition conferred by the order are not authorised by this Act to be so conferred; or
  - (ii) that the interests of that applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to the order or the certificate,

may quash the order, or any provision of the order, or the certificate (either generally or in so far as it affects any property of that applicant).

(4) Except as provided by sub-paragraph (2) above, the validity of any such order or certificate as is mentioned in that sub-paragraph shall not, either before or after the order or certificate has been made or given, be questioned in any legal proceedings whatsoever.

(5) Subject to any order of the High Court under sub-paragraph (3) above, any such order or certificate as is mentioned in sub-paragraph (2) above shall become operative (except, in the case of an order, where it is subject by virtue of the special land provisions to special parliamentary procedure) on the date on which notice of the making or giving of the order or certificate is published as mentioned in the said sub-paragraph (2).

(6) Where an order such as is mentioned in sub-paragraph (2) above is subject to special parliamentary procedure, sub-paragraphs (2) to (4) of this paragraph—

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- (a) shall not apply to the order if it is confirmed by Act of Parliament under section [<sup>F740</sup>4 or] 6 of the <sup>M144</sup>Statutory Orders (Special Procedure) Act 1945; and
- (b) in any other case, shall have effect as if the reference in sub-paragraph (2) of this paragraph to the date on which notice of the making of the order is first published in accordance with paragraph 5 above were a reference to the date on which the order becomes operative under the said Act of 1945.

(7) In this paragraph—

“the special land provisions” means the provisions, as applied by virtue of sub-paragraph (1) above, of Part III of the <sup>M145</sup>Acquisition of Land Act 1981 or, as the case may require, of Part II of Schedule 3 to that Act; and

“the relevant requirements”, in relation to an order or certificate, means the requirements of this Schedule and such requirements of the special land provisions or of any other enactment as are applicable to that order or certificate by virtue of this paragraph.

#### Textual Amendments

**F739** Words in Sch. 19 para. 6(1)(b) substituted (3.2.2017) by [Housing and Planning Act 2016 \(c. 22\)](#), s. 216(3), [Sch. 17 para. 11](#); S.I. 2017/75, reg. 3(g)

**F740** Words in Sch. 19 para. 6(6)(a) inserted (25.6.2013) by [Growth and Infrastructure Act 2013 \(c. 27\)](#), [ss. 25\(9\)](#), 35(1); S.I. 2013/1488, art. 3(e) (with art. 8(3))

#### Marginal Citations

**M142** 1965 c. 56.

**M143** 1981 c. 67.

**M144** 1945 c. 18 (9 & 10 Geo. 6).

**M145** 1981 c. 67.

#### *Compensation in certain cases of compulsory acquisition*

7 Where—

- (a) in connection with any engineering or building operations to which a compulsory works order relates, a licence under Chapter II of Part II of this Act is granted, or is deemed to be granted, to the [<sup>F741</sup>appropriate agency]; and
- (b) that licence is a licence to abstract water or to obstruct or impede the flow of any inland waters,

no compensation shall be payable by virtue of sub-paragraph (1) of paragraph 6 above in respect of any land or interest injuriously affected by the carrying out of those operations, in so far as that land or interest is injuriously affected by the abstraction of water, or the obstruction or impeding of the flow, in accordance with the provisions of the licence.

#### Textual Amendments

**F741** Words in Sch. 19 para. 7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 311\(e\)](#) (with Sch. 7)

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*Compensation in respect of powers other than acquisition powers*

- 8 (1) If the value of any interest in any relevant land is depreciated by the coming into force of so much of any compulsory works order as—
- (a) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and
  - (b) grants authority for the carrying out of the operations,
- the person entitled to that interest shall be entitled to compensation from the [F742appropriate agency] of an amount equal to the amount of the depreciation.
- (2) Where the person entitled to an interest in any relevant land sustains loss or damage which—
- (a) is attributable to so much of any compulsory works order as—
    - (i) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and
    - (ii) grants authority for the carrying out of the operations;
  - (b) does not consist in depreciation of the value of that interest; and
  - (c) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if his interest in that land had been compulsorily acquired under section 154 of this Act in pursuance of a notice to treat served on the date on which the order comes into force,
- he shall be entitled to compensation from the [F742appropriate agency] in respect of that loss or damage, in addition to compensation under sub-paragraph (1) above.
- (3) Where any damage to, or injurious affection of, any land which is not relevant land is attributable to so much of any compulsory works order as—
- (a) confers compulsory powers, other than powers of compulsory acquisition, for the purpose of enabling any engineering or building operations to be carried out; and
  - (b) grants authority for the carrying out of the operations,
- the [F742appropriate agency] shall pay compensation in respect of that damage or injurious affection to every person entitled to an interest in that land.
- (4) A person who sustains any loss or damage which is attributable to any discharge of water made by the [F742appropriate agency] in pursuance of a compulsory works order shall be entitled to recover compensation from the [F742appropriate agency] in respect of the loss or damage.
- (5) For the purposes of sub-paragraph (4) above any extra expenditure—
- (a) which it becomes reasonably necessary for any water undertaker or public authority (other than the [F742appropriate agency]) to incur for the purpose of properly carrying out any statutory functions; and
  - (b) which is attributable to any such discharge of water as is mentioned in that sub-paragraph,
- shall be deemed to be a loss sustained by the undertaker or public authority and to be so attributable.
- (6) Any question of disputed compensation under this paragraph, shall be referred to and determined by the [F743Upper Tribunal]; and in relation to the determination of any

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such compensation the provisions of [<sup>F744</sup>section] 4 of the <sup>M146</sup>Land Compensation Act 1961 shall apply, subject to any necessary modifications.

- (7) For the purpose of assessing any compensation under this paragraph, so far as that compensation is in respect of loss or damage consisting in depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (8) Where the interest in land in respect of which any compensation falls to be assessed in accordance with sub-paragraph (7) above is subject to a mortgage—
- (a) the compensation shall be assessed as if the interest were not subject to the mortgage;
  - (b) a claim for compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
  - (c) no such compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
  - (d) any such compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.
- (9) In this paragraph “relevant land”, in relation to a compulsory works order, means any land which is not land in relation to which powers of compulsory acquisition are conferred by the order but is—
- (a) land where any operations for which authority is granted by the order are to be carried out;
  - (b) land in relation to which compulsory powers are conferred by the order; or
  - (c) land held with any land falling within paragraph (a) or (b) above.

#### Textual Amendments

**F742** Words in Sch. 19 para. 8 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 311(e)** (with Sch. 7)

**F743** Words in Sch. 19 para. 8(6) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 233(a)** (with Sch. 5)

**F744** Word in Sch. 19 para. 8(6) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 233(b)** (with Sch. 5)

#### Marginal Citations

**M146** 1961 c. 33.

#### *Protection of public undertakings*

- 9 The provisions of section 179 and paragraphs 1, 2 and 5 of Schedule 22 to this Act shall apply, as they apply in relation to the carrying out of works in exercise of the powers specified in those provisions, in relation to the carrying out of works by virtue of an authority granted by so much of any compulsory works order as makes provision other than provision conferring powers of compulsory acquisition.

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### Interpretation

10 In this Schedule—

“bridleway” and “footpath” have the same meanings as in the <sup>M147</sup>Highways Act 1980;

“compulsory works order” means an order under section 168 of this Act;

“powers of compulsory acquisition” means any such powers as are mentioned in subsection (4)(a) of section 168 of this Act;

[<sup>F745</sup>“restricted byway” has the same meaning as in Part 2 of the Countryside and Rights of Way Act 2000;]

<sup>F746</sup>

#### Textual Amendments

**F745** Words in Sch. 19 para. 10 inserted (2.5.2006 for E., 11.5.2006 for W.) by [Restricted Byways \(Application and Consequential Amendment of Provisions\) Regulations 2006 \(S.I. 2006/1177\)](#), reg. 1(2)(4), **Sch. Pt. I**; S.I. 2006/1172, **art. 2(a)-(d)** (with art. 3); S.I. 2006/1279, **art. 2(a)-(d)** (with art. 3)

**F746** Words in Sch. 19 para. 10 omitted (24.5.2007) by virtue of [Planning and Compulsory Purchase Act 2004 \(Corresponding Amendments\) Order 2007 \(S.I. 2007/1519\)](#), art. 1(1), **Sch. para. 9(b)** (with art. 1(3))

#### Marginal Citations

**M147** 1980 c. 66.

## SCHEDULE 20

Section 173.207.

### SUPPLEMENTAL PROVISIONS WITH RESPECT TO POWERS OF ENTRY

#### Modifications etc. (not altering text)

**C197** Sch. 20 applied (with modifications) (2.7.2009) by [Broads Authority Act 2009 \(c. i\)](#), **s. 24(3)** (with ss. 2(3), 16(3), 41(4), 42, Sch. 6)

**C198** Sch. 20 applied (with modifications) (2.7.2009) by [Broads Authority Act 2009 \(c. i\)](#), **s. 17(3)** (with ss. 2(3), 16(3), 42, Sch. 6)

**C199** Sch. 20 applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), **6(3)**

**C200** Sch. 20 applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, **5(3)**

**C201** Sch. 20 applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, **6(3)**

**C202** Sch. 20 applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), **5(3)**

### Notice of entry

1 (1) Without prejudice to any power exercisable by virtue of a warrant under this Schedule, no person shall make an entry into any premises or vessel by virtue of any power conferred by sections 169 to 172 of this Act except—

(a) in an emergency; or

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- (b) at a reasonable time and after the required notice of the intended entry has been given to the occupier of the premises or vessel.
- (2) For the purposes of this paragraph the required notice is seven days' notice; but such notice shall not be required in the case of an exercise of a power conferred by section 169 or 172 above, except where the premises in question are residential premises, the vessel in question is used for residential purposes or the entry in question is to be with heavy equipment.
- (3) For the purposes of the application of this paragraph to the power conferred by section 170 of this Act the reference in sub-paragraph (1) above to an emergency—
- (a) in relation to any entry to premises for the purposes of, or for purposes connected with, the exercise or proposed exercise of any power in relation to a street, includes a reference to any circumstances requiring the carrying out of emergency works within the meaning of Part III of the <sup>M148</sup>New Roads and Street Works Act 1991; and
- (b) in relation to any other entry to premises, includes a reference to any danger to property and to any interruption of a supply of water provided to any premises by any person and to any interruption of the provision of sewerage services to any premises.
- (4) Until the coming into force of section 52 of the New Roads and Street Works Act 1991, sub-paragraph (3) above shall have effect as if the reference to Part III of that Act were a reference to the <sup>M149</sup>Public Utilities Street Works Act 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing that section 52 into force on different days for different purposes (including the purposes of this paragraph).

#### **Marginal Citations**

**M148** 1991 c. 22.

**M149** 1950 c. 39.

#### *Warrant to exercise power*

- 2 (1) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—
- (a) that there are reasonable grounds for the exercise in relation to any premises or vessel of a power conferred by sections 169 to 172 of this Act; and
- (b) that one or more of the conditions specified in sub-paragraph (2) below is fulfilled in relation to those premises or that vessel,
- the justice may by warrant authorise the relevant authority to designate a person who shall be authorised to exercise the power in relation to those premises, or that vessel, in accordance with the warrant and, if need be, by force.
- (2) The conditions mentioned in sub-paragraph (1)(b) above are—
- (a) that the exercise of the power in relation to the premises or vessel has been refused;
- (b) that such a refusal is reasonably apprehended;
- (c) that the premises are unoccupied or the vessel is unoccupied;
- (d) that the occupier is temporarily absent from the premises or vessel;



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- (e) that the case is one of urgency; or
  - (f) that an application for admission to the premises or vessel would defeat the object of the proposed entry.
- (3) A justice of the peace shall not issue a warrant under this Schedule by virtue only of being satisfied that the exercise of a power in relation to any premises or vessel has been refused, or that a refusal is reasonably apprehended, unless he is also satisfied—
- (a) that notice of the intention to apply for the warrant has been given to the occupier of the premises or vessel; or
  - (b) that the giving of such a notice would defeat the object of the proposed entry.
- (4) For the purposes of the application of this Schedule to the powers conferred by section 171 of this Act in a case to which subsection (4) of that section applies, a justice of the peace shall not issue a warrant under this Schedule unless he is satisfied that the Secretary of State has given his authorisation for the purposes of that subsection in relation to that case.
- (5) Every warrant under this Schedule shall continue in force until the purposes for which the warrant was issued have been fulfilled.

#### *Manner of exercise of powers*

- 3 A person designated as the person who may exercise any power to which this Schedule applies shall produce evidence of his designation and other authority before he exercises the power.

#### *Supplementary powers of person making entry etc.*

- 4 A person authorised to enter any premises or vessel by virtue of any power to which this Schedule applies shall be entitled, subject in the case of a power exercisable under a warrant to the terms of the warrant, to take with him on to the premises or vessel such other persons and such equipment as may be necessary.

#### *Duty to secure premises*

- 5 A person who enters any premises or vessel in the exercise of any power to which this Schedule applies shall leave the premises or vessel as effectually secured against trespassers as he found them.

#### *Compensation*

- 6 (1) Where any person exercises any power to which this Schedule applies, it shall be the duty of the relevant authority to make full compensation to any person who has sustained loss or damage by reason of—
- (a) the exercise by the designated person of that power or of any power to take any person or equipment with him when entering the premises or vessel in relation to which the power is exercised; or
  - (b) the performance of, or failure of the designated person to perform, the duty imposed by paragraph 5 above.
- (2) Compensation shall not be payable by virtue of sub-paragraph (1) above in respect of any loss or damage if the loss or damage—
- (a) is attributable to the default of the person who sustained it; or

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- (b) is loss or damage in respect of which compensation is payable by virtue of any other provision of this Act.
- (3) Any dispute as to a person's entitlement to compensation under this paragraph, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the relevant authority and the person who claims to have sustained the loss or damage or, in default of agreement—
- (a) by the [<sup>F747</sup>Upper Tribunal] where the relevant authority is one of the Ministers; and
  - (b) by one of the Ministers, where the Agency [<sup>F748</sup>or the NRBW] is the relevant authority.

#### Textual Amendments

**F747** Words in Sch. 20 para. 6(3)(a) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 234** (with Sch. 5)

**F748** Words in Sch. 20 para. 6(3)(b) inserted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 312(2)** (with Sch. 7)

#### *Obstruction of person exercising power*

- 7 A person who intentionally obstructs another person acting in the exercise of any power to which this Schedule applies shall be guilty of an offence and [<sup>F749</sup>liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.]

#### Textual Amendments

**F749** Sch. 20 para. 7(a)(b) and word substituted (1.4.1996) for words by [1995 c. 25, s. 120\(1\)](#), **Sch. 22 para. 188** (with ss. 7(6), 115, 117); [S.I. 1996/186](#), **art. 3**

#### *Interpretation*

- 8 (1) In this Schedule—
- “relevant authority”, in relation to a power to which this Schedule applies, means one of the Ministers [<sup>F750</sup>, the Agency or the NRBW], according to who is entitled, by virtue of the provision by which the power is conferred or, as the case may be, the warrant, to designate the person by whom the power may be exercised; and
- “sewerage services” has the same meaning as in the <sup>M150</sup>Water Industry Act 1991.
- (2) References in this Schedule to a power to which this Schedule applies are references to any power conferred by Chapter II of Part VI of this Act, including a power exercisable by virtue of a warrant under this Schedule.
- (3) For the purposes of paragraphs 5 and 6 above a person enters any premises or vessel by virtue of a power to which this Schedule applies notwithstanding that he has failed

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(whether by virtue of the waiver of the requirement by the occupier of the premises or otherwise) to comply with-

- (a) any requirement to enter those premises at a reasonable time or after giving notice of his intended entry; or
- (b) the requirement imposed by paragraph 3 above.

#### Textual Amendments

**F750** Words in Sch. 20 para. 8(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 312(3)** (with Sch. 7)

#### Marginal Citations

**M150** 1991 c. 56.

## SCHEDULE 21

Section 177.

### CCOMPENSATION ETC. IN RESPECT OF CERTAIN WORKS POWER

#### *Compensation in respect of street works powers*

- 1 (1) This paragraph applies, in relation to the [<sup>F751</sup>appropriate agency], to the powers conferred on it in relation to streets by sections 159 and 162 of this Act.
- (2) It shall be the duty of the [<sup>F751</sup>appropriate agency]—
  - (a) to do as little damage as possible in the exercise of the powers to which this paragraph applies; and
  - (b) to pay compensation for any loss caused or damage done in the exercise of those powers.
- (3) Any dispute as to whether compensation should be paid under sub-paragraph (2) above, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the Secretary of State.
- (4) Until the coming into force of Part III of the <sup>M151</sup>New Roads and Street Works Act 1991, a payment of compensation under this paragraph shall be treated for the purposes of section 32 of the <sup>M152</sup>Public Utilities Street Works Act 1950 (provisions against duplication of compensation) as made under an enactment passed before that Act of 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing Part III of that Act into force on different days for different purposes (including the purposes of this paragraph).

#### Textual Amendments

**F751** Words in Sch. 21 para. 1 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 313** (with Sch. 7)

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#### **Marginal Citations**

**M151** 1991 c. 22.

**M152** 1950 c. 39.

#### *Compensation in respect of pipe-laying works on private land*

- 2 (1) If the value of any interest in any relevant land is depreciated by virtue of the exercise by the [<sup>F752</sup>appropriate agency] of any power to carry out pipe-laying works on private land, the person entitled to that interest shall be entitled to compensation from the [<sup>F752</sup>appropriate agency] of an amount equal to the amount of the depreciation.
- (2) Where the person entitled to an interest in any relevant land sustains loss or damage which—
- (a) is attributable to the exercise by the [<sup>F752</sup>appropriate agency] of any power to carry out pipe-laying works on private land;
  - (b) does not consist in depreciation of the value of that interest; and
  - (c) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if his interest in that land had been compulsorily acquired under section 154 of this Act,
- he shall be entitled to compensation from the [<sup>F752</sup>appropriate agency] in respect of that loss or damage, in addition to compensation under sub-paragraph (1) above.
- (3) Where any damage to, or injurious affection of, any land which is not relevant land is attributable to the exercise by the [<sup>F752</sup>appropriate agency], of any power to carry out pipe-laying works on private land, the [<sup>F752</sup>appropriate agency] shall pay compensation in respect of that damage or injurious affection to every person entitled to an interest in that land.
- (4) The Secretary of State may by regulations make provision requiring the [<sup>F752</sup>appropriate agency], where it is proposing or has begun, in a prescribed case, to exercise any power to carry out pipe-laying works on private land, to make advance payments on account of compensation that will become payable in respect of the exercise of that power.
- (5) In this paragraph “relevant land”, in relation to any exercise of a power to carry out pipe-laying works on private land, means the land where the power is exercised or land held with that land.
- (6) In this paragraph the references to a power to carry out pipe-laying works on private land are references to any of the powers conferred by virtue of section 160 or 162(3) of this Act.

#### **Textual Amendments**

**F752** Words in Sch. 21 para. 2 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 313** (with Sch. 7)

#### *Assessment of compensation under paragraph 2*

- 3 (1) Any question of disputed compensation under paragraph 2 above shall be referred to and determined by the [<sup>F753</sup>Upper Tribunal] ; and in relation to the determination

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of any such compensation the provisions of [<sup>F754</sup>section] 4 of the <sup>M153</sup>Land Compensation Act 1961 shall apply, subject to any necessary modifications.

- (2) For the purpose of assessing any compensation under paragraph 2 above, so far as that compensation is in respect of loss or damage consisting in depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (3) Where the interest in land in respect of which any compensation falls to be assessed in accordance with sub-paragraph (2) above is subject to a mortgage—
  - (a) the compensation shall be assessed as if the interest were not subject to the mortgage;
  - (b) a claim for compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
  - (c) no such compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
  - (d) any such compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.
- (4) Where, apart from this sub-paragraph, any person entitled to an interest in any land would be entitled under paragraph 2 above to an amount of compensation in respect of any works, there shall be deducted from that amount an amount equal to the amount by which the carrying out of the works has enhanced the value of any other land which—
  - (a) is contiguous or adjacent to that land; and
  - (b) is land to an interest in which that person is entitled in the same capacity.

#### Textual Amendments

**F753** Words in Sch. 21 para. 3(1) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 235(a)(i)** (with Sch. 5)

**F754** Word in Sch. 21 para. 3(1) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 235(a)(ii)** (with Sch. 5)

#### Marginal Citations

**M153** 1961 c. 33.

#### *Compensation in respect of discharges for works purposes*

- 4 (1) It shall be the duty of the [<sup>F755</sup>appropriate agency]—
  - (a) to cause as little loss and damage as possible in the exercise of the powers conferred on it by section 163 of this Act; and
  - (b) to pay compensation for any loss caused or damage done in the exercise of those powers.

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- (2) For the purposes of sub-paragraph (1) above any extra expenditure—
- (a) which it becomes reasonably necessary for any water undertaker, sewerage undertaker or public authority (other than the <sup>F755</sup>appropriate agency] itself) to incur for the purpose of properly carrying out any statutory functions; and
  - (b) which is attributable to any discharge of water under section 163 of this Act, shall be deemed to be a loss sustained by the undertaker or public authority and to have been caused in exercise of the powers conferred by that section.
- (3) Any dispute as to whether compensation should be paid under sub-paragraph (1) above, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

#### Textual Amendments

**F755** Words in Sch. 21 para. 4 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 313** (with Sch. 7)

#### *Compensation in respect of flood defence and drainage works*

- 5 (1) Where injury is sustained by any person by reason of the exercise by the <sup>F756</sup>appropriate agency] of any powers under section 165(1) to (3) of this Act, the <sup>F756</sup>appropriate agency] shall be liable to make full compensation to the injured party.
- (2) In case of dispute, the amount of any compensation under sub-paragraph (1) above shall be determined by the <sup>F757</sup>Upper Tribunal] .
- (3) Where injury is sustained by any person by reason of the exercise by the <sup>F756</sup>appropriate agency] of its powers under subsection (1)(b) of section 167 of this Act—
- (a) the <sup>F756</sup>appropriate agency] may, if it thinks fit, pay to him such compensation as it may determine; and
  - (b) if the injury could have been avoided if those powers had been exercised with reasonable care, the provisions of sub-paragraphs (1) and (2) above shall apply as if the injury had been sustained by reason of the exercise by the <sup>F756</sup>appropriate agency] of its powers under section 165(1) to (3) of this Act.

#### Textual Amendments

**F756** Words in Sch. 21 para. 5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 313** (with Sch. 7)

**F757** Words in Sch. 21 para. 5(2) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 235(b)** (with Sch. 5)

#### Modifications etc. (not altering text)

**C203** Sch. 21 para. 5(1)(2) applied (16.3.1992) by [Avon Weir Act 1992 \(c. v\)](#), s. 7(5) (with s. 61)

**C204** Sch. 21 para. 5(1)(2) applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, 8

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**C205** Sch. 21 para. 5(1)(2) applied (with modifications) (W.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(Wales\) Order 2011 \(S.I. 2011/2829\)](#), arts. 1, 7

**C206** Sch. 21 para. 5(1)(2) applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), 7

**C207** Sch. 21 para. 5(1)(2) applied (with modifications) (E.) (1.12.2011) by [The Incidental Flooding and Coastal Erosion \(England\) Order 2011 \(S.I. 2011/2855\)](#), arts. 1(c), 8

## SCHEDULE 22

Section 178.

### PROTECTION FOR PARTICULAR UNDERTAKINGS

#### **Modifications etc. (not altering text)**

**C208** Sch. 22 applied (1.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), ss. 67(2), 76(2)

#### *General provisions protecting undertakings*

- 1 (1) Nothing in any of the provisions of this Act conferring power on the [<sup>F758</sup>appropriate agency] to carry out any works shall confer power to do anything, except with the consent of the persons carrying on an undertaking protected by this paragraph, which, whether directly or indirectly, so interferes or will so interfere—
- (a) with works or property vested in or under the control of the persons carrying on that undertaking, in their capacity as such; or
  - (b) with the use of any such works or property,
- as to affect injuriously those works or that property or the carrying on of that undertaking.
- (2) A consent for the purposes of sub-paragraph (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (3) Subject to the following provisions of this Schedule, any dispute—
- (a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in sub-paragraph (1) above;
  - (b) as to whether any consent for the purposes of this paragraph is being unreasonably withheld; or
  - (c) as to whether any condition subject to which any such consent has been given was reasonable,
- shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.
- (4) The following are the undertakings protected by this paragraph, that is to say—
- (a) the undertakings of the Civil Aviation Authority, [<sup>F759</sup>the Coal Authority] and [<sup>F760</sup>a universal service provider (so far as it is his undertaking in relation to the provision of a universal postal service)];
  - (b) the undertaking of any water undertaker or sewerage undertaker;
  - [<sup>F761</sup>(c) any undertaking consisting in the provision of an electronic communications network;]

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- (d) any airport to which Part V of the <sup>M154</sup>Airports Act 1986 applies;
  - (e) the undertaking of any public gas supplier within the meaning of Part I of the <sup>M155</sup>Gas Act 1986;
  - (f) the undertaking of any person authorised by a licence under Part I of the <sup>M156</sup>Electricity Act 1989 to generate, [<sup>F762</sup>supply or participate in the transmission of] electricity;
  - (g) the undertaking of any navigation authority, harbour authority or conservancy authority or of any internal drainage board;
  - (h) the undertaking of any railway company;
  - (i) any public utility undertaking carried on by a local authority under any Act or under any order having the force of an Act.
  - [<sup>F763</sup>(j) the undertaking of any licensed operator, within the meaning of the Coal Industry Act 1994;]
  - [<sup>F764</sup>(k) the undertaking of a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (air traffic services) to the extent that it is the person's undertaking as licence holder.]
- (4A) In sub-paragraph (4)(a) above "universal service provider" has the same meaning as in [<sup>F765</sup>Part 3 of the Postal Services Act 2011]; and the reference to the provision of a universal postal service shall be construed in accordance with [<sup>F766</sup>that Part].
- (5) For the purposes of this paragraph any reference in this paragraph, in relation to any such airport as is mentioned in sub-paragraph (4)(d) above, to the persons carrying on the undertaking is a reference to the airport operator.
- (6) The reference in sub-paragraph (1) above to the provisions of this Act conferring power to carry out works includes (without prejudice to the extent of that reference apart from this sub-paragraph) a reference to any provisions of any order under section 108 of this Act by virtue of which any such power is conferred.

### Textual Amendments

- F758** Words in Sch. 22 para. 1(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 314\(2\)](#) (with Sch. 7)
- F759** Words in Sch. 22 para. 1(4)(a) substituted (31.10.1994) by 1994 c. 21, s. 67, [Sch. 9 para. 43\(1\)\(a\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F760** Words in Sch. 22 para. 1(4)(a) substituted (26.3.2001) by S.I. 2001/1149, [art. 3\(1\)](#), [Sch. 1 para. 89\(2\)](#)
- F761** Sch. 22 para. 1(4)(c) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 17 para. 114\(2\)](#) (with Sch. 18); S.I. 2003/1900, [arts. 1\(2\), 2\(1\)](#), Sch. 1 (with [art. 3](#)) (as amended by S.I. 2003/3142, [art. 1\(3\)](#)); S.I. 2003/3142, [art. 3\(2\)](#) (with [art. 11](#))
- F762** Words in Sch. 22 para. 1(4)(f) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), [Sch. 19 para. 18](#); S.I. 2004/2184, [art. 2\(2\)](#), Sch. 2
- F763** Sch. 22 para. 1(4)(j) inserted (31.10.1994) by 1994 c. 21, s. 67, [Sch. 9 para. 43\(1\)\(b\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F764** Sch. 22 para. 1(4)(k) inserted (1.4.2001) by 2000 c. 38, s. 37, [Sch. 5 para. 15](#) (with s. 106); S.I. 2001/869, [art. 2](#)
- F765** Words in Sch. 22 para. 1(4A) substituted (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), s. 93(2)(3), [Sch. 12 para. 138\(a\)](#); S.I. 2011/2329, [art. 3](#)
- F766** Words in Sch. 22 para. 1(4A) substituted (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), s. 93(2)(3), [Sch. 12 para. 138\(b\)](#); S.I. 2011/2329, [art. 3](#)



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#### Modifications etc. (not altering text)

**C209** Sch. 22 para. 1(4)(e) amended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(2)(n)**; S.I. 1996/218, **art. 2**

#### Marginal Citations

**M154** 1986 c. 31.

**M155** 1986 c. 44.

**M156** 1989 c. 29.

#### *Protection for statutory powers and jurisdiction*

- 2 (1) Subject to sub-paragraph (2) below, nothing in—
- (a) any provision of this Act conferring power on the [<sup>F767</sup>appropriate agency] to carry out any works; or
  - (b) any of the flood defence provisions of this Act,
- shall confer power to do anything which prejudices the exercise of any statutory power, authority or jurisdiction from time to time vested in or exercisable by any persons carrying on an undertaking protected by paragraph 1 above.
- (2) Nothing in this paragraph shall be taken to exclude the application of section 109 of this Act to any work executed by persons carrying on an undertaking protected by paragraph 1 above.
- (3) Sub-paragraph (6) of paragraph 1 above shall apply for the purposes of sub-paragraph (1) above as it applies for the purposes of sub-paragraph (1) of that paragraph.
- (4) This paragraph shall be without prejudice to any power under this Act to transfer the functions of any authority.

#### Textual Amendments

**F767** Words in Sch. 22 para. 2(1)(a) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 314(2)** (with Sch. 7)

#### *Special protection for certain undertakings in respect of street works*

- 3 (1) Subject to the following provisions of this paragraph and without prejudice to the other provisions of this Schedule, the powers under the street works provisions to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the <sup>M157</sup>Highways Act 1980)—
- (a) is under the control or management of, or is maintainable by, a railway company or a navigation authority; or
  - (b) forms part of a level crossing belonging to such a company or authority or to any other person,
- except with the consent of the company or authority or, as the case may be, of the person to whom the level crossing belongs.
- (2) Sub-paragraph (1) above shall not apply to any exercise of the powers conferred by the street works provisions for the carrying out of emergency works, within the meaning of Part III of the <sup>M158</sup>New Roads and Street Works Act 1991.

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- (3) A consent given for the purposes of sub-paragraph (1) above may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.
- (4) Any dispute—
- (a) as to whether a consent for the purposes of sub-paragraph (1) above should be given or withheld; or
  - (b) as to whether the conditions to which any such consent is made subject are reasonable,
- shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.
- (5) If the [<sup>F768</sup>appropriate agency] contravenes, without reasonable excuse, the requirements of sub-paragraph (1) above, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (6) The restrictions contained in paragraphs (1) to (5) of section 32 of the <sup>M159</sup>Tramways Act 1870 (protection of tramways) shall apply in relation to any exercise of a power conferred by the street works provision s—
- (a) as they apply in relation to the powers mentioned in that section; and
  - (b) as if references in that section to a tramway included references to a trolley vehicle system.
- (7) In this paragraph “the street works provisions” means sections 159 and 162(2) of this Act.
- (8) Until the coming into force of section 52 of the New Roads and Street Works Act 1991, sub-paragraph (2) above shall have effect as if the reference to Part III of that Act were a reference to the <sup>M160</sup>Public Utilities Street Works Act 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing that section 52 into force on different days for different purposes (including the purposes of this paragraph).

#### **Textual Amendments**

**F768** Words in Sch. 22 para. 3(5) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 314(2)** (with Sch. 7)

#### **Marginal Citations**

**M157** 1980 c. 66.

**M158** 1991 c. 22.

**M159** 1870 c. 78.

**M160** 1950 c. 39.

#### *Protection for railways in connection with carrying out of flood defence functions*

- 4 (1) Without prejudice to the preceding provisions of this Schedule, nothing in the flood defence provisions of this Act shall authorise any person, except with the consent of the railway company in question, to interfere with—
- (a) any railway bridge or any other work connected with a railway; or

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- (b) the structure, use or maintenance of a railway or the traffic on it.
- (2) A consent for the purposes of sub-paragraph (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (3) Subject to the following provisions of this Schedule, any dispute—
- (a) as to whether anything interferes, or will interfere, as mentioned in sub-paragraph (1) above;
  - (b) as to whether any consent for the purposes of this paragraph is being unreasonably withheld; or
  - (c) as to whether any condition subject to which any such consent has been given was reasonable,
- shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

*[<sup>F769</sup>Protection for electronic communications networks]*

**Textual Amendments**

**F769** Sch. 22 para. 5 cross-heading substituted (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), Sch. 3 para. 31(b); S.I. 2017/1286, reg. 2(d)

- 5 <sup>F770</sup>Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)] (which provides a procedure for certain cases where works involve the alteration of [<sup>F771</sup>electronic communications apparatus]) shall apply to the [<sup>F772</sup>appropriate agency] for the purposes of any works carried out by the [<sup>F772</sup>appropriate agency] in exercise of any of the powers conferred by any enactment (including [<sup>F773</sup>section 37 of the 1995 Act ]<sup>F774</sup>or, as the case may be, article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I.2012/1903)]).

**Textual Amendments**

- F770** Words in Sch. 22 para. 5 substituted (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), Sch. 3 para. 31(a); S.I. 2017/1286, reg. 2(d)
- F771** Words in Sch. 22 para. 5 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), Sch. 17 para. 114(3) (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- F772** Words in Sch. 22 para. 5 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 314(3)(a) (with Sch. 7)
- F773** Words in Sch. 22 para. 5 substituted (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 189 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F774** Words in Sch. 22 para. 5 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 314(3)(b) (with Sch. 7)

*Status: Point in time view as at 17/09/2018.*

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### *Interpretation*

- 6 In this Schedule “railway company” means the British Railways Board, [<sup>F775</sup>Transport for London or any subsidiary (within the meaning of the Greater London Authority Act 1999) of Transport for London,] or any other person authorised by any enactment, or by any order, rule or regulation made under any enactment, to construct, work or carry on a railway.

#### **Textual Amendments**

**F775** Words in Sch. 22 para. 6 substituted (15.7.2003) by [The Transport for London \(Consequential Provisions\) Order 2003 \(S.I. 2003/1615\)](#), art. 1(1), **Sch. 1 para. 16(3)**

## SCHEDULE 23

Section 182.

### MINERAL RIGHTS

#### *Acquisition of mineral rights*

- 1 (1) This paragraph applies in each of the following cases, that is to say—
- (a) where the [<sup>F776</sup>appropriate agency] acquires any land (whether compulsorily in exercise of any power conferred by or under this Act or otherwise); and
  - (b) where the [<sup>F776</sup>appropriate agency] carries out any works in relation to any land for the purposes of, or in connection with, the carrying out of any of its functions.
- (2) Subject to sub-paragraph (3) below, the [<sup>F776</sup>appropriate agency] shall not, by virtue only of its acquisition of the land or the carrying out of the works, become entitled to any mines or minerals lying under the land; and, accordingly, any such mines or minerals shall be deemed to be excepted from any instrument by virtue of which the land vests in the [<sup>F776</sup>appropriate agency] unless express provision to the contrary is contained—
- (a) where the land vests in the [<sup>F776</sup>appropriate agency] by virtue of a conveyance, in the conveyance; or
  - (b) where the land is acquired by the [<sup>F776</sup>appropriate agency] in pursuance of any power of compulsory acquisition conferred by or under this Act, in the order authorising the acquisition.
- (3) The [<sup>F776</sup>appropriate agency] shall be entitled to such parts of any mines or minerals that lie under the land as it may be necessary for it to dig, carry away or use in carrying out any works for the purpose of constructing, making, erecting or laying any part of its undertaking.

#### **Textual Amendments**

**F776** Words in Sch. 23 paras. 1-7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(a)** (with Sch. 7)

*Status: Point in time view as at 17/09/2018.*

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*Notice required for the working of underlying mines*

- 2 (1) If the owner of any mines or minerals underlying any part of the [F776appropriate agency's] undertaking proposes to work them, he shall, not less than thirty days before the commencement of working, serve notice of his intention to do so on the [F776appropriate agency].
- (2) On receipt of a notice under sub-paragraph (1) above the [F776appropriate agency] may cause the mines or minerals to be inspected by a person designated by it for the purpose.
- (3) Subject to sub-paragraph (5) and paragraph 3 below, if, where notice has been served under this paragraph, the [F776appropriate agency]—
- (a) considers that the working of the underlying mines or minerals is likely to damage any part of its undertaking;
  - (b) is willing to compensate the owner of the mines or minerals for the restriction imposed by virtue of this sub-paragraph; and
  - (c) serves notice to that effect on the owner of the mines or minerals before the end of the period of thirty days mentioned in sub-paragraph (1) above,
- the owner shall not work the mines or minerals except to such extent as may be determined by the [F776appropriate agency], and the [F776appropriate agency] shall so compensate the owner.
- (4) Any dispute as to the amount of any compensation payable by virtue of sub-paragraph (3) above shall be referred to and determined by the [F777Upper Tribunal].
- (5) If before the end of the period of thirty days mentioned in sub-paragraph (1) above, no notice has been served under sub-paragraph (3)(c) above by the [F776appropriate agency], the entitlement of the owner of the mines and minerals to work them shall be an entitlement to work them by proper methods and in the usual manner of working such mines or minerals in the district in question.
- (6) If any damage to the undertaking of the [F776appropriate agency] is caused by the working otherwise than as authorised by this paragraph of any mines or minerals underlying any part of its undertaking—
- (a) the owner of the mines or minerals shall, at his own expense, forthwith repair the damage; and
  - (b) the [F776appropriate agency] may, without waiting for the owner to perform his duty, repair the damage and may recover the expenses reasonably incurred by it in doing so from the owner.

**Textual Amendments**

**F776** Words in Sch. 23 paras. 1-7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(a)** (with Sch. 7)

**F777** Words in Sch. 23 para. 2(4) substituted (1.6.2009) by [The Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009 \(S.I. 2009/1307\)](#), art. 1, **Sch. 1 para. 236** (with Sch. 5)

*Mining communications*

- 3 (1) If the working of any mines or minerals is prevented by reason of any of the preceding provisions of this Schedule, the owner of the mines or minerals may cut and make

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such communication works through the mines or minerals, or the strata in which they are situated, as are required for the ventilation, drainage and working of mines or minerals which are not underlying any part of the undertaking of the [<sup>F776</sup>appropriate agency].

- (2) Communication works cut or made under this paragraph—
- (a) shall not, in a case where—
- (i) the part of the undertaking in question was constructed, made, erected or laid in pursuance of an order made under any enactment or is situated on land acquired by the [<sup>F776</sup>appropriate agency] in pursuance of any powers of compulsory acquisition; and
- (ii) the order authorising the works or acquisition designates dimensions or sections for the communication works, exceed those dimensions or fail to conform to those sections; and
- (b) in any other case, shall not be more than 2.44 metres high or more than 2.44 metres wide.
- (3) Communication works cut or made under this paragraph shall not be cut or made on the land where the part of the undertaking is situated so as to cause damage to that part of the undertaking.
- (4) Where works carried out under this paragraph by the owner of any mines or minerals cause loss or damage to the owner or occupier of land lying over the mines or minerals, the [<sup>F776</sup>appropriate agency] shall pay full compensation to him for the loss or damage.
- (5) Sub-paragraph (4) above shall not apply where the person sustaining the loss or damage is the owner of the mines.
- (6) In this paragraph “communication works” means airways, headways, gateways or water levels.

#### Textual Amendments

**F776** Words in Sch. 23 paras. 1-7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(a)** (with Sch. 7)

#### *Compensation relating to severance*

- 4 (1) Where mines or minerals underlying any part of the [<sup>F776</sup>appropriate agency's] undertaking are situated so as, on two or more sides of that land, to extend beyond the land on which that part of the undertaking is situated, the [<sup>F776</sup>appropriate agency] shall from time to time pay to the owner of the mines or minerals (in addition to any compensation under paragraph 2 above) any expenses and losses incurred by him in consequence of—
- (a) the severance by the undertaking of the land lying over the mines;
- (b) the interruption of continuous working of the mines in consequence of paragraph 2(3) above;
- (c) the mines being so worked in accordance with restrictions imposed by virtue of this Act or any order made under this Act,

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and shall pay for any minerals not purchased by the [<sup>F776</sup>appropriate agency] which cannot be got or won by reason of the part of the undertaking in question being situated where it is or by reason of the requirement to avoid damage to any part of the [<sup>F776</sup>appropriate agency's] undertaking.

- (2) Any dispute as to whether any sum should be paid under this paragraph, or as to the amount payable, shall be referred to the arbitration of a single arbitrator appointed by agreement between the [<sup>F776</sup>appropriate agency] and the owner of the mines or minerals or, in default of agreement, by the Secretary of State.

#### Textual Amendments

**F776** Words in Sch. 23 paras. 1-7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(a)** (with Sch. 7)

#### *Powers of entry*

- 5 (1) Any person designated in writing for the purpose by the [<sup>F776</sup>appropriate agency] may, for any purpose specified in sub-paragraph (2) below—
- (a) enter on any land in which the mines or minerals are, or are thought to be, being worked, and which is in or near to the land where any part of the [<sup>F776</sup>appropriate agency's] undertaking is situated; and
  - (b) enter the mines and any works connected with the mines.
- (2) The purposes mentioned in sub-paragraph (1) above are—
- (a) carrying out any inspection under paragraph 2(2) above;
  - (b) ascertaining whether any mines or minerals have been worked so as to damage the undertaking of the [<sup>F776</sup>appropriate agency]; and
  - (c) carrying out any works and taking any other steps which the [<sup>F776</sup>appropriate agency] in question is authorised to carry out or take under paragraph 2(6) above.
- (3) A person authorised to enter any premises under this paragraph may—
- (a) make use of any equipment belonging to the owner of the mines or minerals in question; and
  - (b) use all necessary means for discovering the distance from any part of the undertaking of the [<sup>F776</sup>appropriate agency] to the parts of the mines or the minerals which are, or are about to be, worked.
- (4) Schedule 20 to this Act shall apply in relation to the powers conferred by this paragraph as it applies to the powers conferred by sections 169 to 172 of this Act.

#### Textual Amendments

**F776** Words in Sch. 23 paras. 1-7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(a)** (with Sch. 7)

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*No exemption for injury to mines and minerals*

- 6 Nothing in any provision of this Act or of any order made under this Act shall be construed as exempting the [F776 appropriate agency] from any liability to which it would, apart from that provision, have been subject in respect of any damage to any mines or minerals underlying any part of its undertaking or in respect of any loss sustained in relation to any such mines or minerals by a person having an interest therein.

**Textual Amendments**

**F776** Words in Sch. 23 paras. 1-7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(a)** (with Sch. 7)

*Interpretation*

- 7 (1) In this Schedule—
- “conveyance” has the same meaning as in the <sup>M161</sup>Law of Property Act 1925;
- “designated distance”, in relation to any part of the [F776 appropriate agency's] undertaking, means, subject to sub-paragraph (6) below, thirty-seven metres;
- “mines” means mines of coal, ironstone, slate or other minerals;
- “owner”, in relation to mines and minerals, includes a lessee or occupier;
- and
- “underlying”, in relation to any part of the [F776 appropriate agency's] undertaking, means lying under, or within the designated distance from, that part of that undertaking.
- (2) For the purposes of this Schedule the [F776 appropriate agency's] undertaking shall be taken to consist of so much of any of the following as is for the time being vested in or held by the [F776 appropriate agency] for the purposes of, or in connection with, the carrying out of any of its functions, that is to say—
- (a) any buildings, reservoirs, wells, boreholes or other structures; and
- [F778](b) any resource mains, discharge pipes or other underground works which are for the time being vested in the appropriate agency.]
- (3) References in this Schedule to the working of any mines or minerals include references to the draining of mines and to the winning or getting of minerals.
- (4) For the purposes of this Schedule land shall be treated as acquired by the [F776 appropriate agency] in pursuance of powers of compulsory acquisition if it—
- (a) was so acquired by a water authority or any predecessor of a water authority; and
- (b) is now vested in the [F776 appropriate agency] in accordance with a scheme under Schedule 2 to the <sup>M162</sup>Water Act 1989 or otherwise.
- (5) In relation to any land treated by virtue of sub-paragraph (4) above as acquired in pursuance of powers of compulsory acquisition, references in this Schedule to the order authorising the acquisition include references to any local statutory provision



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which immediately before 1st September 1989 had effect in relation to that land for the purposes of any provisions corresponding to the provisions of this Schedule.

(6) For the purposes of this Schedule where—

- (a) any part of the [<sup>F776</sup>appropriate agency's] undertaking was constructed, made, erected or laid in pursuance of an order made under any enactment or is situated on land acquired by the [<sup>F776</sup>appropriate agency] in pursuance of any powers of compulsory acquisition; and
- (b) the order authorising the works or acquisition designates any distance for the purposes of any enactment relating to mines or minerals underlying that part of the undertaking,

then for the purposes of this Schedule that distance (instead of the distance specified in subsection (1) above) shall be the designated distance in relation to that part of the undertaking.

#### Textual Amendments

**F776** Words in Sch. 23 paras. 1-7 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(a)** (with Sch. 7)

**F778** Sch. 23 para. 7(2)(b) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), **ss. 60(2)**, 94(2)(n)

#### Marginal Citations

**M161** 1925 c. 20.

**M162** 1989 c. 15.

## SCHEDULE 24

Section 204.

### DISCLOSURE OF INFORMATION

#### PART I

PERSONS IN RESPECT OF WHOSE FUNCTIONS DISCLOSURE MAY BE MADE

Any Minister of the Crown.

**F779** ...

#### Textual Amendments

**F779** Words in Sch. 24 Pt. I omitted (1.4.2014) by virtue of [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), **Sch. 1 para. 97(a)** (with art. 3)

[<sup>F780</sup>The Competition and Markets Authority].

*Status: Point in time view as at 17/09/2018.*

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#### Textual Amendments

**F780** Words in Sch. 24 Pt. I substituted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 97\(a\)](#) (with art. 3)

[<sup>F781</sup>The Office of Communications]

#### Textual Amendments

**F781** Words in Sch. 24 Pt. I substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 17 para. 115\(2\)](#) (with [Sch. 18](#)); [S.I. 2003/1900](#), arts. 1(2), 2(1), [Sch. 1](#) (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(2) (with art. 11)

The Civil Aviation Authority.

The Director General of Gas Supply.

The Director General of Electricity Supply.

[<sup>F782</sup>The Coal Authority.]

#### Textual Amendments

**F782** Entry in Sch. 24 Pt. I inserted (31.10.1994) by [1994 c. 21](#), s. 67, [Sch. 9 para. 43\(2\)\(a\)](#) (with s. 40(7)); [S.I. 1994/2553](#), art. 2

[<sup>F783</sup>Office of Rail and Road]

#### Textual Amendments

**F783** Words in Sch. 24 substituted (16.10.2015) by [The Office of Rail Regulation \(Change of Name\) Regulations 2015 \(S.I. 2015/1682\)](#), reg. 1(2), [Sch. para. 4\(j\)](#)

A local weights and measures authority in England and Wales.

## PART II

### ENACTMENTS ETC. IN RESPECT OF WHICH DISCLOSURE MAY BE MADE

#### Modifications etc. (not altering text)

**C210** Sch. 24 Pt. II modified (8.2.2007 immediately before the [Wireless Telegraphy Act 2006 \(c. 36\)](#) comes into force) by [Wireless Telegraphy \(Pre-Consolidation Amendments\) Order 2006 \(S.I. 2006/1391\)](#), art. 1, [Sch. para. 7\(3\)\(c\)](#)

The <sup>M163</sup>Trade Descriptions Act 1968.

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**Marginal Citations**

**M163** 1968 c. 29.

The <sup>M164</sup>Fair Trading Act 1973.

**Marginal Citations**

**M164** 1973 c. 41.

The <sup>M165</sup>Consumer Credit Act 1974.

**Marginal Citations**

**M165** 1974 c. 39.

F784

**Textual Amendments**

**F784** Entries in Sch. 24 Pt. II repealed (1.3.2000) by 1998 c. 41, ss. 66(5), 74(3), 76(3), Sch. 10 Pt. IV para. 14(a), **Sch. 14 Pt. I** (with s. 73); S.I. 2000/344, art. 3(1), **Sch.**

F784

The <sup>M166</sup>Estate Agents Act 1979.

**Marginal Citations**

**M166** 1979 c. 38.

The <sup>M167</sup>Competition Act 1980.

**Marginal Citations**

**M167** 1980 c. 21.

The <sup>M168</sup>Telecommunications Act 1984.

**Marginal Citations**

**M168** 1984 c. 12.

The <sup>M169</sup>Airports Act 1986.

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**Marginal Citations**

M169 1986 c. 31.

The <sup>M170</sup>Gas Act 1986.

**Marginal Citations**

M170 1986 c. 44.

The <sup>M171</sup>Consumer Protection Act 1987.

**Marginal Citations**

M171 1987 c. 43.

The <sup>M172</sup>Electricity Act 1989.

**Marginal Citations**

M172 1989 c. 29.

[<sup>F785</sup>The Railways Act 1993]

**Textual Amendments**

F785 Entry in Sch. 24 Pt. II inserted (6.1.1994) by 1993 c. 43, ss. 150(1)(o), 152(1), **Sch. 12 para. 31**; S.I. 1993/3237, **art. 2(2)**.

[<sup>F786</sup>The Coal Industry Act 1994.]

**Textual Amendments**

F786 Entry in Sch. 24 Pt. II inserted (31.10.1994) by 1994 c. 21, s. 67, **Sch. 9 para. 43(2)(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**

[<sup>F787</sup>The Competition Act 1998.]

**Textual Amendments**

F787 Entry in Sch. 24 Pt. II inserted (11.1.1999) by 1998 c. 41, s. 66(5), **Sch. 10 Pt. IV para. 14(b)** (with s. 73); S.I. 1998/3166, **art. 2, Sch.**

[<sup>F788</sup>Part I of the Transport Act 2000.]

*Status: Point in time view as at 17/09/2018.*

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**Textual Amendments**

**F788** Entry in Sch. 24 Pt. II inserted (21.12.2001) by [S.I. 2001/4050](#), art. 2, **Sch. Pt. IV para. 22**

[<sup>F789</sup>The Enterprise Act 2002.]

**Textual Amendments**

**F789** Words in Sch. 24 Pt. II inserted (1.4.2003) by [Enterprise Act 2002 \(c. 40\)](#), s. 279, **Sch. 25 para. 26(2)(b)**; [S.I. 2003/766](#), art. 2, **Sch.** (with art. 3) (as amended (20.7.2007) by [S.I. 2007/1846](#), reg. 3(2), **Sch.**)

[<sup>F790</sup>The Communications Act 2003.]

**Textual Amendments**

**F790** Words in Sch. 24 Pt. II inserted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), **Sch. 17 para. 115(3)** (with **Sch. 18**); [S.I. 2003/1900](#), arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by [S.I. 2003/3142](#), art. 1(3)); [S.I. 2003/3142](#), art. 3(2) (with art. 11)

[<sup>F791</sup>The Railways Act 2005.]

**Textual Amendments**

**F791** Words in Sch. 24 Pt. II inserted (8.6.2005) by [Railways Act 2005 \(c. 14\)](#), s. 60(2), **Sch. 12 para. 11**; [S.I. 2005/1444](#), art. 2(1), **Sch. 1**

F792

**Textual Amendments**

**F792** Words in Sch. 24 Pt. II repealed (26.5.2008) by [The Consumer Protection from Unfair Trading Regulations 2008 \(S.I. 2008/1277\)](#), reg. 1, **Sch. 2 para. 50(a)**, **Sch. 4 Pt. 1** (with reg. 28(2)(3))

[<sup>F793</sup>Any subordinate legislation made for the purpose of securing compliance with Directive [2005/29/EC](#) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.

Any subordinate legislation made for the purpose of securing compliance with Directive [2006/114/EC](#) of the European Parliament and of the Council of 12 December 2006 concerning misleading and comparative advertising.]

**Textual Amendments**

**F793** Words in Sch. 24 Pt. II inserted (26.5.2008) by [The Consumer Protection from Unfair Trading Regulations 2008 \(S.I. 2008/1277\)](#), reg. 1, **Sch. 2 para. 50(b)** (with reg. 28(2)(3))

[<sup>F794</sup>Part 1 of the Civil Aviation Act 2012.]

*Status: Point in time view as at 17/09/2018.*

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#### Textual Amendments

**F794** Words in Sch. 24 Pt. II inserted (6.4.2013) by [Civil Aviation Act 2012 \(c. 19\)](#), s. 110(1), [Sch. 9 para. 7](#) (with [Sch. 10 paras. 12, 17](#)); S.I. 2013/589, art. 2(3)

[<sup>F795</sup>Parts 3 and 4 of the Enterprise and Regulatory Reform Act 2013.]

#### Textual Amendments

**F795** Words in Sch. 24 Pt. II inserted (1.4.2014) by [The Enterprise and Regulatory Reform Act 2013 \(Competition\) \(Consequential, Transitional and Saving Provisions\) Order 2014 \(S.I. 2014/892\)](#), art. 1(1), [Sch. 1 para. 97\(b\)](#) (with art. 3)

## SCHEDULE 25

Section 210.

### BYELAW - MAKING POWERS OF THE [<sup>F796</sup>APPROPRIATE AGENCY]

#### Textual Amendments

**F796** Words in [Sch. 25](#) heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 315\(b\)](#) (with [Sch. 7](#))

#### *Byelaws for regulating use of inland waters*

- 1 (1) Subject to the following provisions of this paragraph but without prejudice to the powers conferred by the following provisions of this Schedule, where it appears to the [<sup>F797</sup>appropriate agency] to be necessary or expedient to do so for the purposes of any of the functions specified in [<sup>F798</sup>sub-paragraphs (i), (iii) and (v) of section 2(1) (a) of the 1995 Act], the [<sup>F797</sup>appropriate agency] may make byelaws—
- (a) prohibiting such inland waters as may be specified in the byelaws from being used for boating (whether with mechanically propelled boats or otherwise), swimming or other recreational purposes; or
  - (b) regulating the way in which any inland waters so specified may be used for any of those purposes.
- (2) Byelaws made by the [<sup>F797</sup>appropriate agency] under this paragraph shall not apply to—
- (a) any tidal waters or any discrete waters;
  - (b) any inland waters in relation to which functions are exercisable by a navigation authority, harbour authority or conservancy authority other than the [<sup>F797</sup>appropriate agency]; or
  - (c) any reservoir belonging to, and operated by, a water undertaker.
- (3) Byelaws made in respect of any inland waters by virtue of this paragraph may—
- (a) include provision prohibiting the use of the inland waters by boats which are not for the time being registered with the [<sup>F797</sup>appropriate agency] in such manner as the byelaws may provide; and

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- (b) authorise the [<sup>F797</sup>appropriate agency] to make reasonable charges in respect of the registration of boats in pursuance of the byelaws.

#### Textual Amendments

**F797** Words in Sch. 25 para. 2 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), **Sch. 2 para. 315(b)** (with Sch. 7)

**F798** Words in Sch. 25 para. 1(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 190** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Modifications etc. (not altering text)

**C211** Sch. 25 para. 1 applied (with modifications) (15.8.2002) by S.I. 2002/1998, **arts. 4, 32** (with art. 33)

#### *Byelaws for regulating the use of navigable waters etc.*

- 2 (1) The [<sup>F797</sup>appropriate agency] shall have power to make such byelaws as are mentioned in sub-paragraph (3) below with respect to any inland waters in relation to which—
- (a) there is a public right of navigation; and
  - (b) the condition specified in sub-paragraph (2) below is satisfied,
- and with respect to any land associated with such waters.
- (2) For the purposes of this paragraph the condition mentioned in sub-paragraph (1) above is satisfied in relation to any waters if navigation in those waters—
- (a) is not for the time being subject to the control of any navigation authority, harbour authority or conservancy authority; or
  - (b) is subject to the control of such a navigation authority, harbour authority or conservancy authority as is prescribed for the purposes of this paragraph by reason of its appearing to the Secretary of State to be unable for the time being to carry out its functions.
- (3) The byelaws referred to in sub-paragraph (1) above in relation to any inland waters or to any land associated with any such waters are byelaws for any of the following purposes, that is to say—
- (a) the preservation of order in or on any such waters or land;
  - (b) the prevention of damage to anything in or on any such waters or land or to any such land;
  - (c) securing that persons resorting to any such waters or land so behave as to avoid undue interference with the enjoyment of the waters or land by others.
- (4) Without prejudice to the generality of any of the paragraphs of sub-paragraph (3) above or to the power conferred on the [<sup>F797</sup>appropriate agency] by virtue of paragraph 4 below, the byelaws mentioned in that sub-paragraph include byelaws—
- (a) regulating sailing, boating, bathing and fishing and other forms of recreation;
  - (b) prohibiting the use of the inland waters in question by boats which are not for the time being registered, in such manner as may be required by the byelaws, with the [<sup>F797</sup>appropriate agency];
  - (c) requiring the provision of such sanitary appliances as may be necessary for the purpose of preventing pollution; and

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- (d) authorising the making of reasonable charges in respect of the registration of boats for the purposes of the byelaws.
- (5) In this paragraph “boat” includes a vessel of any description, and “boating” shall be construed accordingly.

**Textual Amendments**

**F797** Words in Sch. 25 para. 2 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(b)** (with Sch. 7)

*Byelaws for regulating the use of the [F799appropriate agency's] waterways etc.*

**Textual Amendments**

**F799** Words in Sch. 25 para. 3 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(b)** (with Sch. 7)

- 3 (1) The [F799appropriate agency] shall have power to make such byelaws as are mentioned in sub-paragraph (2) below with respect to any waterway owned or managed by the [F799appropriate agency] and with respect to any land held or managed with the waterway.
- (2) The byelaws referred to in sub-paragraph (1) above in relation to any waterway or to any land held or managed with any such waterway are byelaws for any of the following purposes, that is to say—
- (a) the preservation of order on or in any such waterway or land;
  - (b) the prevention of damage to anything on or in any such waterway or land or to any such land;
  - (c) securing that persons resorting to any such waterway or land so behave as to avoid undue interference with the enjoyment of the waterway or land by others.
- (3) Without prejudice to the generality of any of the paragraphs of sub-paragraph (2) above or to the power conferred on the [F799appropriate agency] by virtue of paragraph 4 below, the byelaws mentioned in that sub-paragraph include byelaws—
- (a) regulating sailing, boating, bathing and fishing and other forms of recreation;
  - (b) prohibiting the use of the waterway in question by boats which are not for the time being registered, in such manner as may be required by the byelaws, with the [F799appropriate agency];
  - (c) requiring the provision of such sanitary appliances as may be necessary for the purpose of preventing pollution; and
  - (d) authorising the making of reasonable charges in respect of the registration of boats for the purposes of the byelaws.
- (4) In this paragraph—
- “boat” and “boating” have the same meanings as in paragraph 2 above; and
- “waterway” has the same meaning as in the National Parks and Access to the <sup>M173</sup>Countryside Act 1949.



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#### Marginal Citations

M173 1949 c. 97.

#### *Byelaws for controlling certain forms of pollution*

- 4 (1) The [<sup>F800</sup>appropriate agency] may by byelaws make such provision as the [<sup>F800</sup>appropriate agency] considers appropriate—
- (a) for prohibiting or regulating the washing or cleaning in any controlled waters of things of a description specified in the byelaws;
  - (b) for prohibiting or regulating the keeping or use on any controlled waters of vessels of a description specified in the byelaws which are provided with water closets or other sanitary appliances.
- (2) In this paragraph—
- “controlled waters” has the same meaning as in Part III of this Act; and
  - “sanitary appliance”, in relation to a vessel, means any appliance which—
- (a) not being a sink, bath or shower bath, is designed to permit polluting matter to pass into the water where the vessel is situated; and
  - (b) is prescribed for the purposes of this paragraph.

#### Textual Amendments

**F800** Words in Sch. 25 paras. 4-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 315\(b\)](#) (with Sch. 7)

#### *Byelaws for flood defence and drainage purposes*

- 5 (1) The [<sup>F800</sup>appropriate agency] may make such byelaws in relation to any particular locality or localities as it considers necessary [<sup>F801</sup>for any of Purposes 1 to 4.
- (1A) Purpose 1 is to secure the efficient working of a drainage system.
  - (1B) Purpose 2 is to regulate the effects on the environment of a drainage system.
  - (1C) Purpose 3 is to secure the effectiveness of flood risk management work within the meaning of section 165.
  - (1D) Purpose 4 is to secure the effectiveness of works done in reliance on section 38 or 39 of the Flood and Water Management Act 2010 (incidental flooding or coastal erosion).]
- (2) Without prejudice to the generality of sub-paragraph (1) above and subject to sub-paragraph (3) below, the [<sup>F800</sup>appropriate agency] may, in particular, make byelaws for any of the following purposes, that is to say—
- (a) regulating the use and preventing the improper use of any watercourses, banks or works vested in the [<sup>F800</sup>appropriate agency] or under its control or for preserving any such watercourses, banks or works from damage or destruction;
  - (b) regulating the opening of sluices and flood gates in connection with any such works as are mentioned in paragraph (a) above;

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- (c) preventing the obstruction of any watercourse vested in the [F800 appropriate agency] or under its control by the discharge into it of any liquid or solid matter or by reason of any such matter being allowed to flow or fall into it;
- (d) compelling the persons having control of any watercourse vested in the [F800 appropriate agency] or under its control, or of any watercourse flowing into any such watercourse, to cut the vegetable growths in or on the bank of the watercourse and, when cut, to remove them.

(3) No byelaw for any purpose specified in sub-paragraph (2)(a) above shall be valid if it would prevent reasonable facilities being afforded for enabling a watercourse to be used by stock for drinking purposes.

[F802(3A) If, in any particular case,—

- (a) a marine licence is needed for the carrying on of any activity,
- (b) before that activity may be carried on, the consent of the [F800 appropriate agency] would also be required (apart from this sub-paragraph) by virtue of any byelaw under this paragraph, and
- (c) the [F800 appropriate agency] considers that, in view of the terms and conditions that will be included in the marine licence, the requirement for the consent of the [F800 appropriate agency] may be dispensed with, and issues a notice to that effect,

the requirement for the consent of the [F800 appropriate agency] does not apply in relation to the carrying on of that activity.

(3B) In sub-paragraph (3A) “marine licence” has the same meaning as in Part 4 of the Marine and Coastal Access Act 2009.]

(4) Notwithstanding anything in this Act, no byelaw made by the [F800 appropriate agency] under this paragraph shall conflict with or interfere with [F803 the operation of—

- (a) any byelaw made by a navigation authority, harbour authority or conservancy authority;
- (b) any byelaw made under section 129 or 132 of the Marine and Coastal Access Act 2009 (byelaws for protecting marine conservation zones in England);
- (c) any order made under section 134 or 136 of that Act (orders for protecting marine conservation zones in Wales).]

(5) In this paragraph “banks”[F804, “drainage”] and “watercourse” have the same meanings as in Part IV of this Act.

#### Textual Amendments

**F800** Words in Sch. 25 paras. 4-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(b)** (with Sch. 7)

**F801** Sch. 25 para. 5(1A)-(1D) and words substituted for Sch. 25 para. 5(1)(a)(b) (19.7.2011 for E., 1.10.2011 for W.) by [Flood and Water Management Act 2010 \(c. 29\)](#), s. 49(3), **Sch. 2 para. 49** (with s. 49(1)(6)); [S.I. 2011/1770](#), art. 3(f); [S.I. 2011/2204](#), art. 3(2)(d)

**F802** Sch. 25 para. 5(3A)(3B) inserted (6.4.2011) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 84(2), 324(3)** (with **ss. 76-81, 111**); [S.I. 2011/556](#), art. 3(2)(a)

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- F803** Sch. 25 para. 5(4)(a)-(c) substituted for words (12.1.2010 for specified purposes, 12.12.2014 in so far as not already in force) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), s. 324(2)(b)(i), [Sch. 11 para. 3](#); S.I. 2014/3088, art. 2(b)
- F804** Word in Sch. 25 para. 5(5) inserted (30.3.2006) by [Natural Environment and Rural Communities Act 2006 \(c. 16\)](#), [ss. 100\(2\), 107\(7\)](#) (see also S.I. 2006/2541, art. 2)

*Byelaws for purposes of fisheries functions*

- 6 (1) The [<sup>F800</sup>appropriate agency] shall have power, [<sup>F805</sup>in relation to the whole or any part or parts] of the area in relation to which it carries out its functions relating to fisheries under Part V of this Act, to make byelaws generally for the purposes of—
- (a) the better execution of the <sup>M174</sup>Salmon and Freshwater Fisheries Act 1975; and
  - (b) the better protection, preservation and improvement of any [<sup>F806</sup>fisheries of fish to which this paragraph applies.]
- [<sup>F807</sup>(1A) This paragraph applies to—
- (a) salmon, trout, eels, lampreys, smelt, shad and freshwater fish; and
  - (b) fish of such other description as may be specified for the purposes of this paragraph by order under section 40A of the Salmon and Freshwater Fisheries Act 1975.]
- (2) <sup>F808</sup>..., the [<sup>F800</sup>appropriate agency] shall have power, [<sup>F805</sup>in relation to the whole or any part or parts] of the area mentioned in sub-paragraph (1) above, to make byelaws for any of the following purposes, that is to say—
- (a) prohibiting the taking or removal from any water, without lawful authority, of any fish [<sup>F809</sup>to which this paragraph applies], whether alive or dead;
  - [<sup>F810</sup>(aa) specifying close seasons or times for the taking of any fish to which this paragraph applies by such means as may be prescribed by the byelaws;]
  - (b) prohibiting or regulating—
    - (i) the taking of [<sup>F811</sup>any fish to which this paragraph applies] of a size [<sup>F812</sup>greater or] less than such as may be prescribed by the byelaw; or
    - (ii) the taking of fish [<sup>F813</sup>to which this paragraph applies] by any means within such distance as is specified in the byelaw above or below any dam or any other obstruction, whether artificial or natural;
  - (c) prohibiting the use for taking [<sup>F814</sup>fish to which this paragraph applies] of any instrument <sup>F815</sup>... in such waters and at such times as may be prescribed by the byelaws;
  - (d) specifying the nets and other instruments <sup>F816</sup>... which may be used for taking [<sup>F817</sup>fish to which this paragraph applies], imposing requirements as to the use of such nets and other instruments and regulating the use, in connection with fishing with rod and line, of any lure or bait specified in the byelaw;
  - (e) authorising the placing and use of fixed engines at such places, at such times and in such manner as may be prescribed by the byelaws; [<sup>F818</sup>(including requiring fixed engines during close seasons or times to be removed or made incapable of taking or obstructing the passage of fish)]
  - (f) imposing requirements as to the construction, design, material and dimensions of any such nets, instruments or engines as are mentioned in paragraphs (d) and (e) above, including in the case of nets the size of mesh;

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- (g) requiring and regulating the attachment to <sup>F819</sup>... nets and instruments of marks, labels or numbers, or the painting of marks or numbers or the affixing of labels or numbers to boats, coracles or other vessels used in fishing;
- (h) prohibiting the carrying in any boat or vessel whilst being used in fishing for [<sup>F820</sup>fish to which this paragraph applies] of any net [<sup>F821</sup>which may not lawfully be used], or which is without the mark, label or number prescribed by the byelaws; and
- (i) prohibiting or regulating the carrying in a boat or vessel during [<sup>F822</sup>any close season or time for any description of fish to which this paragraph applies of a net capable of taking fish of that description], other than a net commonly used in the area to which the byelaw applies for sea fishing and carried in a boat or vessel commonly used for that purpose.

<sup>F823</sup>(3) .....

<sup>F824</sup>(4) .....

- (5) The [<sup>F800</sup>appropriate agency] shall have power, [<sup>F805</sup>in relation to the whole or any part or parts] of the area mentioned in sub-paragraph (1) above, to make byelaws for the purpose of requiring persons to send to the [<sup>F800</sup>appropriate agency] returns, in such form, giving such particulars and at such times as may be specified in the byelaws—
  - (a) of the period or periods during which they have fished for [<sup>F825</sup>fish to which this paragraph applies],
  - (b) of whether they have taken any; and
  - (c) if they have, of what they have taken.
- [<sup>F826</sup>(5A) A byelaw under this paragraph does not apply to a person (including an employee or agent of the [<sup>F800</sup>appropriate agency]) to the extent that he is acting—
  - (a) with the written authority of the [<sup>F800</sup>appropriate agency]; and
  - (b) in accordance with any conditions imposed by the [<sup>F800</sup>appropriate agency] in relation to that authority.
- (5B) For the avoidance of doubt, a byelaw under this paragraph may apply to an historic installation as to any other fixed engine.]
- (6) Byelaws made under this paragraph may be made to apply to the whole or any part or parts of the year.
- (7) Expressions used in this paragraph and in the <sup>M175</sup>Salmon and Freshwater Fisheries Act 1975 have the same meanings in this paragraph as in that Act.

#### Textual Amendments

- F800** Words in Sch. 25 paras. 4-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(b)** (with Sch. 7)
- F805** Words in Sch. 25 para. 6(1) to (5) substituted (21.9.1995) by 1995 c. 25, s. 105, **Sch. 15 para. 26(1)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**
- F806** Words in Sch. 25 para. 6(1)(b) substituted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 224(2)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 14
- F807** Sch. 25 para. 6(1A) inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), **ss. 224(3)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 14

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- F808** Words in Sch. 25 para. 6(2) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), Sch. 16 para. 24(2)(a), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 15(i), 27(b)
- F809** Words in Sch. 25 para. 6(2)(a) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 24(2)(b)**; S.I. 2009/3345, art. 2, Sch. para. 15(i)
- F810** Sch. 25 para. 6(2)(aa) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 224(4)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 14
- F811** Words in Sch. 25 para. 6(2)(b)(i) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 24(2)(c)(i)**; S.I. 2009/3345, art. 2, Sch. para. 15(i)
- F812** Words in Sch. 25 para. 6(2)(b)(i) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 224(5)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 14
- F813** Words in Sch. 25 para. 6(2)(b)(ii) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 24(2)(c)(ii)**; S.I. 2009/3345, art. 2, Sch. para. 15(i)
- F814** Words in Sch. 25 para. 6(2)(c) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 24(2)(d)(i)**; S.I. 2009/3345, art. 2, Sch. para. 15(i)
- F815** Words in Sch. 25 para. 6(2)(c) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), Sch. 16 para. 24(2)(d)(ii), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 15(i), 27(b)
- F816** Words in Sch. 25 para. 6(2)(d) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), Sch. 16 para. 24(2)(e)(i), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 15(i), 27(b)
- F817** Words in Sch. 25 para. 6(2)(d) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 24(2)(e)(ii)**; S.I. 2009/3345, art. 2, Sch. para. 15(i)
- F818** Words in Sch. 25 para. 6(2)(e) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 224(6)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 14
- F819** Word in Sch. 25 para. 6(2)(g) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), Sch. 16 para. 24(2)(f), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 15(i), 27(b)
- F820** Words in Sch. 25 para. 6(2)(h) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 24(2)(g)(i)**; S.I. 2009/3345, art. 2, Sch. para. 15(i)
- F821** Words in Sch. 25 para. 6(2)(h) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 24(2)(g)(ii)**; S.I. 2009/3345, art. 2, Sch. para. 15(i)
- F822** Words in Sch. 25 para. 6(2)(i) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 24(2)(h)**; S.I. 2009/3345, art. 2, Sch. para. 15(i)
- F823** Sch. 25 para. 6(3) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 224(7)**, 324(3), **Sch. 22 Pt. 5(B)** (with s. 224(10)); S.I. 2009/3345, art. 2, Sch. paras. 14, 27(b)
- F824** Sch. 25 para. 6(4) repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 224(8)**, 324(3), **Sch. 22 Pt. 5(B)**; S.I. 2009/3345, art. 2, Sch. paras. 14, 27(b)
- F825** Words in Sch. 25 para. 6(5) substituted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), **Sch. 16 para. 24(3)**; S.I. 2009/3345, art. 2, Sch. para. 15(i)
- F826** Sch. 25 para. 6(5A)(5B) inserted (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), **ss. 224(9)**, 324(3); S.I. 2009/3345, art. 2, Sch. para. 14

#### Modifications etc. (not altering text)

- C212** Sch. 25 para. 6 amended (27.8.1993) by 1993 c. 12, **ss. 40, 51(2)**, **Sch. 3 Pt. 1 para. 9** (with s. 46).  
Sch. 25 para. 6 excluded by S.I. 1999/1746, **arts. 1(1), 4(1)** (with art. 2) (the exclusion coming into force immediately before the principal appointed day (1.7.1999 appointed by S.I. 1998/3178, **art. 3**))
- C213** Sch. 25 para. 6 modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by The Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), reg. 1(b), **Sch. 1**)
- C214** Sch. 25 para. 6 modified (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), Sch. 23 Pt. 7 paras. 1(3), 2 (with regs. 1(3), 77-79, Sch. 4)

#### Marginal Citations

- M174** 1975 c. 51.  
**M175** 1975 c. 51.

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*[<sup>F827</sup> Fisheries byelaws for marine or aquatic environmental purposes]*

**Textual Amendments**

**F827** Sch. 25 para. 6A inserted (21.9.1995) by 1995 c. 25, s. 103(3) (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3

[<sup>F828</sup>6A(1) Any power to make byelaws conferred by paragraph 6 above may be exercised for marine or aquatic environmental purposes.

(2) The power to make byelaws under paragraph 6 above by virtue of this paragraph is in addition to, and not in derogation from, the power to make byelaws under that paragraph otherwise than by virtue of this paragraph.

(3) In this paragraph “marine or aquatic environmental purposes” means—

- (a) the conservation or enhancement of the natural beauty or amenity of marine or coastal, or aquatic or waterside, areas (including their geological or physiographical features) or of any features of archaeological or historic interest in such areas; or
- (b) the conservation of flora or fauna which are dependent on, or associated with, a marine or coastal, or aquatic or waterside, environment.]

**Textual Amendments**

**F828** Sch. 25 para. 6A inserted (21.9.1995) by 1995 c. 25, s. 103(3) (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3

*Restrictions on powers to make byelaws for fisheries purposes*

<sup>F829</sup>7 .....

**Textual Amendments**

**F829** Sch. 25 para. 7 repealed (12.1.2010) by Marine and Coastal Access Act 2009 (c. 23), s. 324(3), Sch. 16 para. 25, Sch. 22 Pt. 5(B); S.I. 2009/3345, art. 2, Sch. paras. 15(i), 27(b)

SCHEDULE 26

Section 210.

PROCEDURE RELATING TO BYELAWS  
MADE BY THE [<sup>F830</sup> APPROPRIATE AGENCY]

**Textual Amendments**

**F830** Words in Sch. 26 heading substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 315(c) (with Sch. 7)

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#### Modifications etc. (not altering text)

**C215** Sch. 26 applied (with modifications) by S.I. 1999/1746, arts. 1(1), 4(3) (with art. 2) (the exclusion coming into force immediately before the principal appointed day (1.7.1999 appointed by S.I. 1998/3178, art. 3))

**C216** Sch. 26 applied (15.8.2002) by S.I. 2002/1998, art. 17(14) (with art. 33)

#### Confirmation of byelaws

- 1
- (1) No byelaw made by the [F831 appropriate agency] shall have effect until confirmed by the relevant Minister under this Schedule.
  - (2) At least one month before it applies for the confirmation of any byelaw, the [F831 appropriate agency] shall—
    - (a) cause a notice of its intention to make the application to be published in the London Gazette and in such other manner as it considers appropriate for the purpose of bringing the proposed byelaw to the attention of persons likely to be affected by it; and
    - (b) cause copies of the notice to be served on any persons carrying out functions under any enactment who appear to it to be concerned.
  - (3) For at least one month before an application is made by the [F831 appropriate agency] for the confirmation of any byelaw, a copy of it shall be deposited at one or more of the offices of the [F831 appropriate agency], including (if there is one) at an office in the area to which the byelaw would apply.
  - (4) The [F831 appropriate agency] shall provide reasonable facilities for the inspection free of charge of a byelaw deposited under sub-paragraph (3) above.
  - (5) Every person shall be entitled, on application to the [F831 appropriate agency], to be furnished free of charge with a printed copy of a byelaw so deposited.

#### Textual Amendments

**F831** Words in Sch. 26 para. 2 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 315(e) (with Sch. 7)

#### Confirmation with or without modifications

- 2
- (1) Subject to sub-paragraph (3) below, the relevant Minister, with or without a local inquiry, may refuse to confirm any byelaw submitted to him by the [F831 appropriate agency] for confirmation under this Schedule, or may confirm the byelaw either without or, if the [F831 appropriate agency] consents, with modifications.
  - (2) The [F831 appropriate agency] shall, if so directed by the relevant Minister, cause notice of any proposed modifications to be given in accordance with his directions.
  - (3) A byelaw made by the [F831 appropriate agency] under paragraph 4 of Schedule 25 to this Act shall be confirmed without a local inquiry only if—
    - (a) no written objection to its confirmation has been received by the relevant Minister;

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- (b) every objection to its confirmation which has been so received has been withdrawn; or
  - (c) in the opinion of that Minister the person making the objection has no material interest in the controlled waters to which the byelaw relates;
- and in relation to any such byelaw sub-paragraph (1) above shall have effect with the substitution for the words “if the [<sup>F831</sup>appropriate agency] consents” of the words “ after consultation with the [<sup>F831</sup>appropriate agency] ”.

#### Textual Amendments

**F831** Words in Sch. 26 para. 2 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 315(c) (with Sch. 7)

#### *Commencement of byelaw*

- 3 (1) The relevant Minister may fix the date on which any byelaw confirmed under this Schedule is to come into force.
- (2) If no date is so fixed in relation to a byelaw, it shall come into force at the end of the period of one month beginning with the date of confirmation.

#### *Availability of confirmed byelaws*

- 4 (1) Every byelaw made by the [<sup>F832</sup>appropriate agency] and confirmed under this Schedule shall be printed and deposited at one or more of the offices of the [<sup>F832</sup>appropriate agency] , including (if there is one) at an office in the area to which the byelaw applies; and copies of the byelaw shall be available at those offices, at all reasonable times, for inspection by the public free of charge.
- (2) Every person shall be entitled, on application to the [<sup>F832</sup>appropriate agency] and on payment of such reasonable sum as the [<sup>F832</sup>appropriate agency] may determine, to be furnished with a copy of any byelaw so deposited by the [<sup>F832</sup>appropriate agency].

#### Textual Amendments

**F832** Words in Sch. 26 paras. 4-6 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 315(c) (with Sch. 7)

#### *Revocation of byelaws*

- 5 If it appears to the relevant Minister that the revocation of a byelaw is necessary or expedient, he may—
- (a) after giving notice to the [<sup>F832</sup>appropriate agency] and considering any representations or objections made by the [<sup>F832</sup>appropriate agency]; and
  - (b) if required by the [<sup>F832</sup>appropriate agency], after holding a local inquiry, revoke that byelaw.



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#### Textual Amendments

**F832** Words in Sch. 26 paras. 4-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(c)** (with Sch. 7)

#### *Proof of byelaws*

- 6 The production of a printed copy of a byelaw purporting to be made by the [<sup>F832</sup>appropriate agency] upon which is indorsed a certificate, purporting to be signed on its behalf, stating—
- (a) that the byelaw was made by the [<sup>F832</sup>appropriate agency];
  - (b) that the copy is a true copy of the byelaw;
  - (c) that on a specified date the byelaw was confirmed under this Schedule; and
  - (d) the date, if any, fixed under paragraph 3 above for the coming into force of the byelaw,
- shall be prima facie evidence of the facts stated in the certificate, and without proof of the handwriting or official position of any person purporting to sign the certificate.

#### Textual Amendments

**F832** Words in Sch. 26 paras. 4-6 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(c)** (with Sch. 7)

#### *Meaning of “the relevant Minister”*

- 7 In this Schedule “the relevant Minister”—
- (a) in relation to byelaws which—
    - (i) are made by virtue of paragraph 5 of Schedule 25 to this Act or by virtue of section 136(8) of the <sup>M176</sup>Water Act 1989 as read with the savings in paragraphs 1 and 5 of Schedule 2 to the <sup>M177</sup>Water Consolidation (Consequential Provisions) Act 1991 (transfer of land drainage functions under local statutory provisions); and
    - (ii) have effect in [<sup>F833</sup>a flood risk management region <sup>F834</sup>... in England],means the Minister;
  - (b) in relation to byelaws made by virtue of paragraph 6 of that Schedule 25 or by virtue of any provision amended by Schedule 17 to the Water Act 1989 (fisheries functions of the [<sup>F835</sup>Agency]), means the Secretary of State or the Minister; and
  - (c) in relation to any other byelaws, means the Secretary of State.

[<sup>F836</sup>For the purposes of this paragraph “flood risk management region” means the region of a Regional Flood and Coastal Committee, within the meaning of section 22 of the Flood and Water Management Act 2010.]

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#### Textual Amendments

- F833** Words in Sch. 26 para. 7(a)(ii) substituted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 15(a)**
- F834** Words in [Sch. 26 para. 7](#) omitted (14.7.2017) by virtue of [Environment \(Wales\) Act 2016 \(anaw 3\)](#), s. 88(3)(c), **Sch. 2 para. 20(6)**; S.I. 2017/714, art. 2
- F835** Word in Sch. 26 para. 7 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F836** Words in Sch. 26 para. 7 inserted (14.7.2014) by [Water Act 2014 \(c. 21\)](#), s. 94(2)(r), **Sch. 10 para. 15(b)**

#### Marginal Citations

- M176** 1989 c. 15.  
**M177** 1991 c. 60.

## [<sup>F837</sup>SCHEDULE 27

Section 210(3)

### EMERGENCY FISHERIES BYELAWS

#### Textual Amendments

- F837** Sch. 27 inserted (12.1.2010) by [Marine and Coastal Access Act 2009 \(c. 23\)](#), ss. 225(2), 324(3); S.I. 2009/3345, art. 2, [Sch. para. 14](#)

#### *Emergency fisheries byelaws*

- 1 (1) In this Schedule, “emergency fisheries byelaw” means a byelaw made under paragraph 6 of Schedule 25 to this Act (fisheries) in the circumstances in sub-paragraph (2) below.
- (2) The circumstances are that—
- (a) the [<sup>F838</sup>appropriate agency] considers that, because of any event or likely event, harm is occurring or is likely to occur to—
    - (i) any fish to which paragraph 6 of Schedule 25 to this Act applies or to the spawn, gametes or food of any such fish, or
    - (ii) the marine or coastal, or aquatic or waterside, environment,
  - (b) the [<sup>F838</sup>appropriate agency] considers that the byelaw would prevent or limit that harm, or would be reasonably likely to do so,
  - (c) the [<sup>F838</sup>appropriate agency] considers that for that purpose there is a need for the byelaw to come into force as a matter of urgency, and
  - (d) the event or the likelihood of the event could not reasonably have been foreseen.
- (3) Schedule 26 to this Act (procedure relating to byelaws made by the [<sup>F838</sup>appropriate agency]) does not apply in relation to an emergency fisheries byelaw.
- (4) In sub-paragraph (2)(a), the reference to harm to the marine or coastal, or aquatic or waterside, environment is to—

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- (a) harm to the natural beauty or amenity of marine or coastal, or aquatic or waterside, areas (including their geological or physiographical features) or to any features of archaeological or historic interest in such areas, or
- (b) harm to flora or fauna which are dependent on or associated with the marine or coastal, or aquatic or waterside, environment.

#### Textual Amendments

**F838** Words in Sch. 27 para. 1 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(d)** (with Sch. 7)

#### *Commencement*

- 2 An emergency fisheries byelaw comes into force—
- (a) on the date specified in the byelaw, or
  - (b) if no date is so specified, on the day after that on which it is made.

#### *Notification of the appropriate national authority*

- 3 The [<sup>F839</sup>appropriate agency] must, within 24 hours of making an emergency fisheries byelaw—
- (a) send a copy of the byelaw to the appropriate national authority, and
  - (b) explain to the appropriate national authority why the byelaw is being made as an emergency fisheries byelaw.

#### Textual Amendments

**F839** Words in Sch. 27 paras. 3-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(d)** (with Sch. 7)

#### *Publication*

- 4 The [<sup>F839</sup>appropriate agency] must publish notice of the making of an emergency fisheries byelaw (including a copy of the byelaw)—
- (a) in the London Gazette;
  - (b) where the byelaw has effect in Wales, in the Welsh language in such manner as the [<sup>F839</sup>appropriate agency] thinks appropriate;
  - (c) in such other manner as it thinks appropriate for the purpose of bringing the byelaw to the attention of persons likely to be affected by it.

#### Textual Amendments

**F839** Words in Sch. 27 paras. 3-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(d)** (with Sch. 7)

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#### *Amendment and revocation*

- 5 (1) If at any time the appropriate national authority is satisfied that an emergency fisheries byelaw would better serve to prevent or limit the harm referred to in paragraph 1(2)(a) above if it were amended, the authority must amend it accordingly.
- (2) If at any time the appropriate national authority is satisfied that an emergency fisheries byelaw is no longer needed in order to prevent or limit the harm referred to in paragraph 1(2)(a) above, the authority must revoke it.
- (3) The [<sup>F839</sup>appropriate agency] must publish notice of an amendment or revocation under this paragraph as specified in paragraph 4(a) to (c) above.

#### **Textual Amendments**

**F839** Words in Sch. 27 paras. 3-5 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(d)** (with Sch. 7)

#### *Expiry and extension*

- 6 (1) Subject to paragraph 7 below, an emergency fisheries byelaw expires (unless earlier revoked)—
- (a) in accordance with provision made by the byelaw, or
- (b) if the byelaw does not contain provision for its expiry, at the end of the period of twelve months beginning with the day on which it comes into force.
- (2) A byelaw may not under sub-paragraph (1)(a) above remain in force for longer than the period of twelve months beginning with the day on which it comes into force.
- 7 (1) The [<sup>F840</sup>appropriate agency] may, at any time before an emergency fisheries byelaw expires, apply to the appropriate national authority for it to be extended.
- (2) On such an application, the appropriate national authority may extend the byelaw at any time before its expiry, provided the authority is satisfied that—
- (a) the byelaw is still needed to prevent or limit the harm referred to in paragraph 1(2)(a) above, and
- (b) the need for the extension could not reasonably have been avoided by the [<sup>F840</sup>appropriate agency].
- (3) A byelaw may be extended under sub-paragraph (2) above for such period not exceeding six months as the appropriate national authority may specify.
- (4) A byelaw may not be extended under sub-paragraph (2) above on more than one occasion.

#### **Textual Amendments**

**F840** Words in Sch. 27 paras. 7-9 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(d)** (with Sch. 7)

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### *Availability*

- 8 (1) Every emergency fisheries byelaw shall be printed and deposited at one or more of the offices of the [F840appropriate agency], including (if there is one) at an office in the area to which the byelaw applies; and copies of the byelaw shall be available at those offices, at all reasonable times, for inspection by the public free of charge.
- (2) Every person shall be entitled, on application to the [F840appropriate agency] and on payment of such reasonable sum as the [F840appropriate agency] may determine, to be furnished with a copy of any emergency fisheries byelaw so deposited by the [F840appropriate agency].

#### **Textual Amendments**

**F840** Words in Sch. 27 paras. 7-9 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(d)** (with Sch. 7)

### *Proof*

- 9 The production of a printed copy of an emergency fisheries byelaw purporting to be made by the [F840appropriate agency] upon which is indorsed a certificate, purporting to be signed on its behalf, stating—
- (a) that the byelaw was made by the [F840appropriate agency], and
- (b) that the copy is a true copy of the byelaw,
- shall be prima facie evidence of the facts stated in the certificate, and without proof of the handwriting or official position of any person purporting to sign the certificate.

#### **Textual Amendments**

**F840** Words in Sch. 27 paras. 7-9 substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 315(d)** (with Sch. 7)

### *“Appropriate national authority”*

- 10 In this Schedule “appropriate national authority” has the same meaning as in the Salmon and Freshwater Fisheries Act 1975.]

### TABLE OF DERIVATIONS

- 1 Note: The following abbreviations are used in this Table:—

1945 =	The Water Act 1945 (c. 42)
1963 =	The Water Resources Act 1963 (c. 38)

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1965 =	The Science and Technology Act 1965 (c. 4)
1973 =	The Water Act 1973 (c. 37)
1975 =	The Salmon and Freshwater Fisheries Act 1975 (c. 51)
1976 =	The Land Drainage Act 1976 (c. 70)
1977 =	The Criminal Law Act 1977 (c. 45)
1980(LG) =	The Local Government, Planning and Land Act 1980 (c. 65)
1981 =	The Water Act 1981 (c. 12)
1982(CJA) =	The Criminal Justice Act 1982 (c. 43)
1983 =	The Water Act 1983 (c. 23)
1984 =	The Telecommunications Act 1984 (c. 12)
1985(LG) =	The Local Government Act 1985 (c. 51)
1986(GA) =	The Gas Act 1986 (c. 44)
1989 =	The Water Act 1989 (c. 15)
1989(EA) =	The Electricity Act 1989 (c. 29)
1990 =	The Environmental Protection Act 1990 (c. 43)
1991(NR) =	The New Roads and Street Works Act 1991 (c. 22)
R: (followed by a number) =	The recommendation so numbered as set out in the Appendix to the Report of the Law Commission (Cm. 1483).

- 2 Transfer of functions orders (“TFOs”), where applicable in relation to a provision re-enacted in the Bill, are specified at the appropriate place in column 2 of the Table.
- 3 General provisions contained in section 32 of the Magistrates’ Courts Act 1980 (c. 43) and section 46 of the Criminal Justice Act 1982 (c. 48) provide, respectively, for the maximum fine on summary conviction of an either way offence to be the statutory maximum and for a reference to the amount of the maximum fine to which a person is liable in respect of a summary offence to become a reference to a level on the standard scale. Where the effect of one of these enactments is consolidated it is not referred to separately in column 2 of this Table.

Provision of Act	Derivation
1	1989 s. 1.
2	1963 s. 126(3) & (4); 1989 s. 1(1), 8(4) & (5), 136(7) & (8), 141(4) & (7), 142(1) & 143(1), 189(1) (definition of “function”) & Sch 13 paras 23(3) & 27.

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3	1989 s. 188.
4	1989 s. 144 & 145(1)(a) & (b), (2) & (3).
5	1989 s. 146; Sch 12 paras 4(7) & 6(4).
6	1989 s. 3.
7	1989 s. 2.
8	1989 s. 141(1)(b) & (c), (2) & (3).
9	1989 ss. 136(6) & (7) & 137(1)–(2).
10	1989 s. 137(3), (7), (10) & (11) & 138(1) & (8).
11	1989 ss. 137(11) & 138(2)–(7) & (9).
12	1976 s. 4; 1989 s. 139(1) and Sch 15 paras 1 & 2. TFO: SI 1978/272 Sch 3, para 7(2); R: 6.
13	1976 s. 5(1)–(6) & (8); 1985(LG) Sch 7 para 2 & SI 1986/208 Sch 1 Pt II para 2; 1989 Sch 15 paras 1 & 3.
14	1976 s. 5(7); 1989 ss. 137(8) & 139(3) & Sch 15 para 1.
15	1989 s. 7(6) & (7).
16	1989 ss. 8(1)–(3), (5)–(7) & 152(8).
17	1989 s. 9; 1990 Sch 9 para 17(2).
18	1989 s. 10; 1990 Sch 9 para 17(3).
19	1989 s. 125.
20	1989 s. 126.
21	1963 ss. 19(1), (3)–(7) & 135(1)(part) & (5); 1973 Sch 8 para 85; 1989 s. 127; 1989(EA) Sch 16 para 10; TFOs: SI 1965/145 Sch 1; SI 1970/1537 Art 2(1); SI 1970/1681 Sch 3 para 9(1); SI 1974/692 Sch 1 Pt III; SI 1983/1127 Art 2(3).
22	1963 s. 19(2) & (6); 1989 s. 127(2) & (5).
23	1963 s. 22; 1973 s. 9; 1989 Sch 13 paras 1 and 4.
24	1963 ss. 23, 49 & 128(1); 1976 (c. 44) s. 5(8); 1989 Sch 13 paras 1 & 5 & Sch 25 para 2.

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25	1963 ss. 36(1)–(3), (5) & (6), 48, 49 & 128(1); 1976 (c. 44) s. 5(8); 1989 Sch 13 paras 1, 12 & 16 & Sch 25 para 2.
26	1963 s. 24(6) & 36(4).
27	1963 s. 24(1)–(3) & (5) & 26(1)(b); 1989 Sch 13 para 6.
28	1963 ss. 24(2)(proviso) & 55; 1973 s. 9; 1989 Sch 13 para 1.
29	1963 s. 24(4), (5) & (10); 1973 Sch 8 para 78.
30	1963 s. 78(1)–(3) & (7); 1973 s. 9; 1989 Sch 13 paras 1 & 20.
31	1963 s. 78(4)–(6).
32	1963 s. 24(7)–(9); 1973 s. 9; 1989 Sch 13 para 1.
33	1963 ss. 25 & 134(4); 1973 s. 9; 1989 Sch 13 paras 1 & 7.
34	1963 s. 54(1)–(3) & (5).
35	1963 s. 27; 1968 (c. 35) s. 1; 1973 s. 9; 1989 Sch 13 para 1.
36	1963 s. 37(3); 1973 s. 9; 1989 Sch 13 para 1.
37	1963 ss. 28 & 37(5); 1973 s. 9; 1989 Sch 13 paras 1 & 8.
38	1963 ss. 28(3) (part), 29(3) & (8) & 37(5); 1973 s. 9; 1989 Sch 13 para 1.
39	1963 ss. 26(1) & (2), 29(2) & (7)(a), 36(6), 37(5) & 135(5); 1973 s. 9; 1989 Sch 13 paras 1 & 9(1).
40	1963 ss. 29(4)–(6) & (7)(b) & 37(5); 1973 s. 9; 1989 Sch 13 paras 1 & 9(2).
41	1963 s. 38(1) & (2); 1973 s. 9 & Sch 8 para 79; 1989 Sch 13 paras 1 & 13.
42	1963 ss. 38(3) & (4) & 41(1)–(4) & (7)–(9); 1973 s. 9; 1989 Sch 13 paras 1 & 14(2).
43	1963 ss. 39(1), (2) & (4) & 40; 1973 s. 9; 1989 Sch 13 para 1.
44	1963 ss. 39(3)–(6), 40 & 41(1), (5) & (7)–(9); 1989 Sch 13 paras 1 & 14(1).
45	1963 s. 54(2), (3) & (5).



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46	1963 s. 30(1)–(3) & (5)–(7) & 54(4); 1973 s. 9; 1989 Sch 13 paras 1 & 10.
47	1963 ss. 30(4), 31(4) & 37(1).
48	1963 ss. 26(1)(a), 31(1) & (3) & 37(2).
49	1963 s. 32(1), (2), (6) & (7); 1973 s. 9; 1989 Sch 13 paras 1 & 11.
50	1963 s. 32(3), (4), (6) & (7); 1973 s. 9; 1989 Sch 13 para 1.
51	1963 s. 42; 1973 s. 9; 1989 Sch 13 para 1.
52	1963 s. 43(1)–(5) & (9); 1973 s. 9; 1989 Sch 13 para 1.
53	1963 s. 43(5)–(8); 1973 s. 9; 1989 Sch 13 para 1.
54	1963 s. 44; 1973 s. 9; 1989 Sch 13 para 1.
55	1963 s. 47(1)–(3) & (11); 1973 s. 9; 1989 Sch 13 para 1.
56	1963 s. 47(3)–(5); 1973 s. 9; 1989 Sch 13 para 1.
57	1963 s. 45; 1973 s. 9; 1989 Sch 13 paras 1 & 15.
58	1963 s. 64; 1989 Sch 13 para 19.
59	1963 s. 54(2) & (5).
60	1963 s. 50; 1973 s. 9; 1989 Sch 13 para 1.
61	1963 ss. 46 & 47(6); 1973 s. 9; 1989 Sch 13 para 1.
62	1963 ss. 47(7)–(10) & 71(3); 1973 s. 9; 1989 Sch 13 para 1.
63	1963 s. 51; 1973 s. 9; 1989 Sch 13 para 1.
64	1963 ss. 43(1) & 52; 1973 s. 9; 1989 Sch 13 para 1.
65	Introduces Sch 7
66	1963 s. 131(1), (2) & (8) & 134(4); 1989 Sch 13 para 29; TFOs: SI 1965/319; SI 1970/1681.
67	1963 s. 132; 1989 Sch 13 para 30.
68	1963 ss. 116 & 134(4) & (6); TFOs: SI 1965/319 Sch 3 para 2.

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69	1963 s. 117; 1973 s. 9; 1989 Sch 13 para 1.
70	1963 s. 135(8); IA s. 17.
71	1963 ss. 133(2)–(4), 134(4) & (6) & 135(1).
72	1963 ss. 105, 134(4) & (6) & 135(1), (3), (6) & (7); 1973 Sch 8 para 86; 1989 Sch 13 para 31(1)(e) & (3).
73	1989 ss. 131(1), (2) & (8) & 132(1), (2) & (9).
74	1989 ss. 131(3)–(4) & (9) & 133(7)(b) & (c).
75	1989 ss. 132(3), (4), (6), (7) & (10) & 133(7)(b) & (c).
76	1989 ss. 131(5)–(7) & 132(5).
77	1963 s. 128(2); 1989 ss. 133(1)–(4) & 135(1) & Sch 13 para 28.
78	1989 ss. 132(8) & 133(5), (6) & (7)(a); 1991(NR) Sch 8 para 116(2).
79	1989 ss. 131(8), 132(9) & 133(8) & Sch 14 para 4.
80	1989 s. 134.
81	1989 s. 135(2).
82	1989 s. 104.
83	1989 s. 105.
84	1989 s. 106.
85	1989 s. 107(1) & (6); 1990 s. 145(1).
86	1989 s. 107(2)–(4).
87	1989 s. 107(5) & 108(7) & (8).
88	1989 s. 108(1) & (9) & 113(1) & Sch 19 para 8(7); 1990 Sch 15 para 29.
89	1989 ss. 108(2)–(6) & 124(1).
90	1989 s. 109.
91	1989 Sch 12 para 8.
92	1989 s. 110.
93	1989 s. 111(1)–(3) & (5).
94	1989 s. 112(1), (4)–(7) & (9).
95	1989 s. 112(2), (3) & (9).
96	1989 s. 111(4) & 112(8).

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97	1989 s. 116.
98	1989 s. 123.
99	1989 s. 113(2) & (3).
100	1989 s. 122.
101	1989 s. 121(2).
102	1989 s. 171.
103	Introduces Sch 13.
104	1989 ss. 103(1), (2) (part) & (4) to (6) & 124.
105	1976 s. 113; 1989 s. 136(1).
106	1989 s. 136(3)–(5) & (9).
107	1976 ss. 8(1), 18, 24(2) & (3), 26; 1989 Sch 15 paras 1 & 9(1).
108	1976 ss. 10(1), (3) & (4), 94, 109(1), (5) (b) & (6) & 116(1); 1989 Sch 15 para 1; SI 1991/983; TFO: SI 1978/272 Sch 3 para 7(5) & (8).
109	1976 s. 29(1), (2), (4), (6) & (7); 1989 Sch 15 para 1.
110	1976 ss. 29(2A), (3), (5) & (9) & 109(1) & (2); 1989 Sch 15 paras 1, 13 & 35; TFO: SI 1978/272 Sch 3 para 7(3).
111	1976 s. 23(2)–(5); 1984 Sch 4 para 66(1); 1989 Sch 15 paras 1 & 8; TFO: SI 1978/272 Sch 3 para 7(4) & (6).
112	1976 s. 95; TFO: SI 1978/272 Sch 3 para 7.
113	1976 s. 8(2) & (3) 114(1) & 116; 1989 Sch 15 para 1; TFO: SI 1978/272 Sch 3 para 7(5).
114	1989 s. 141(1)(a).
115	1975 s. 28(3)–(6) & Sch 3 paras 7–9 & 13; 1989 Sch 17 paras 1 & 7(7)(a) & (14)(a) & (b); TFO: SI 1978/272 Sch 3 para 6.
116	1989 s. 171.
117	1989 Sch 1 para 15(1)–(3) & (5).
118	1989 Sch 1 para 15(4) & 16.
119	1963 s. 88 & 1989 Sch 1 para 15(4) & Sch 13 para 1.

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120	1963 s. 91 & 135(1) & (2); 1989 Sch 13 paras 1, 24 & 31; TFOs: SI 1976/1775; SI 1979/571 Art 3(5); SI 1981/238 Arts 2 & 3(4); R: 16.
121	1989 Sch 1 para 21.
122	1989 Sch 1 para 22.
123	1989 s. 129(1)–(3) & (7)–(9).
124	1989 s. 129(3)–(6).
125	1963 s. 60(5A) & (6); 1973 s. 9 & Sch 8 para 80(3); 1989 Sch 13 paras 1 & 18(2) & (3).
126	1963 ss. 60(1)–(5), 116 & 117; 1973 s. 9 & Sch 8 para 80(1); 1989 Sch 13 paras 1 & 18(1); TFOs: SI 1965/319 Sch 3 para 2 & SI 1970/1681.
127	1963 s. 63(1)–(3), (8), (10) & (11); 1973 s. 9; 1989 Sch 13 para 1.
128	1963 s. 63(4)–(6); 1973 s. 9; 1989 Sch 13 para 1.
129	1963 ss. 63(7), 116 & 117.
130	1963 s. 131(6) & (7); 1973 s. 9; 1989 Sch 13 para 1; TFOs: SI 1965/319; SI 1970/1681.
131	1989 Sch 12 para 9(1)–(3), (7) & (8).
132	1989 Sch 12 para 9(3)–(6).
133	1989 Sch 25 para 80(1).
134	1976 ss. 48 & 89(2); SI 1978/319 Sch para 2; 1989 Sch 15 paras 1 & 20; SI 1990/214 reg 2.
135	1976 s. 49 & 109(1) & (2); SI 1978/319 Sch para 3; 1989 Sch 15 paras 1 & 21. SI 1990/214 regs 3 & 4; TFO: SI 1978/272 Sch 3 para 7(5).
136	SI 1990/214 reg 3.
137	1976 ss. 50(1)–(4) & (9) & 116(4); 1989 Sch 15 paras 1 & 22; TFO: SI 1978/272 Sch 3 para 7(5).
138	1976 ss. 51 & 109(1) & (3); SI 1978/319 Sch para 4; 1989 Sch 15 paras 1 & 23.
139	1976 s. 84(1)–(3) & (5); 1989 Sch 15 para 1; SI 1990/72 reg 3A(1); SI 1991/523 reg 3.

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140	1976 s. 84(5)–(8); 1989 Sch 15 para 1; TFO: SI 1978/272 Sch 3 para 7(4).
141	1976 s. 85; 1989 Sch 15 para 1; TFO: SI 1978/272 Sch 3 para 7(4).
142	1975 s. 28(3)(a) & (b); 1989 Sch 17 para 7(7)(a).
143	1976 s. 88(1), (2) & (5); 1989 Sch 15 paras 1 & 29.
144	1989 ss. 145(1)(c) & 189(1).
145	1976 ss. 89(1) & 116(1); SI 1978/319 Sch para 6; 1989 Sch 15 paras 1 & 30.
146	1989 Sch 1 para 17.
147	1976 s. 90(1)–(5); 1989 Sch 15 para 1; TFO: SI 1978/272 Sch 3 para 7(3).
148	1976 ss. 32(5) & 92; 1989 Sch 15 para 1; TFO: SI 1978/272 Sch 3 para 7(3).
149	1976 s. 90(6) & (7); 1989 Sch 15 paras 1 & 31; TFO: SI 1978/272 Sch 3 para 7(3).
150	1989 s. 170(7) & (8).
151	1989 Sch 1 para 18.
152	1989 Sch 1 para 19.
153	1989 s. 184 & Sch 1 para 20.
154	1989 s. 151.
155	1976 ss. 36 & 116; 1989 Sch 15 paras 1 & 16; TFO SI 1978/272 Sch 3 para 7(3).
156	1975 Sch 3 paras 37 and 38; 1989 Sch 17 paras 1 and 7(14)((e) & (f).
157	1989 s. 152.
158	1963 ss. 81 & 135(1); 1972 (c. 61) s. 18(6); 1973 s. 9; 1989 Sch 13 paras 1 & 22.
159	1989 s. 154(1) & (5) & Sch 19 paras 1 & 2(1), (2) & (8).
160	1989 Sch 19 paras 1 & 4(1), (4) & (5).
161	1989 ss. 115, 122 & 124.
162	1989 s. 154(1), (3) & (4) & Sch 19 paras 1(2), 2(1)(c) & (d) & 4(1)(c) & (d).

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163	1989 Sch 19 para 8(1), (5), (6) & (8); R: 17.
164	1989 s. 176 & Sch 19 para 9(1) & (3)–(8) & Sch 26 para 43.
165	1976 ss. 8(2), 17, 22, 23(1), 90(7) & 116(4); 1989 Sch 15 paras 1 & 5.
166	1976 s. 32; 1989 Sch 15 paras 1 & 14.
167	1976 s. 33(1)–(3) & (5); 1989 Sch 15 para 1; 1990 Sch 15 para 18.
168	1975 Sch 3 para 37; 1989 ss. 155 & 157(1) & Sch 17 para 7(4)(e).
169	1989 s. 147(1), (2) & (4).
170	1989 Sch 19 para 10(1)–(3).
171	1989 s. 156(1)–(5).
172	1989 s. 147(1), (2) & (4).
173	Introduces Sch 20.
174	1989 s. 180.
175	1989 s. 153(2) & (6).
176	1989 s. 167.
177	Introduces Sch 21.
178	Introduces Sch 22.
179	1989 s. 160(4)–(7) & (9).
180	1976 s. 106; 1989 Sch 15 para 1.
181	1975 s. 38; 1976 s. 115; 1989 Sch 17 para 1 & Sch 19 para 7.
182	1989 s. 159.
183	1976 s. 111; 1979 (c. 46) Sch 4 para 16; 1989 s. 163; 1990 (c. 11) Sch 2 para 81(2).
184	1989 s. 157(2) & (3).
185	1976 s. 24(1) & 26(12); 1989 Sch 15 para 1.
186	1989 Sch 19 paras 1 & 11.
187	1989 s. 150.
188	1989 s. 143(2).
189	1963 s. 53; 1973 s. 9; 1989 Sch 13 paras 1 & 17.
190	1989 s. 117 & 121; 1990 Sch 15 para 30.

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191	1989 Sch 19 para 9(2) & (8).
192	1989 s. 103(2) & (3).
193	1976 s. 9(1), (7), (8), (10) & (11); 1989 Sch 15 paras 1 & 4 & Sch 26 para 38; TFO: SI 1978/272 Sch 3 para 7(5).
194	1976 s. 9(3), (5) & (6); 1989 Sch 15 paras 1 & 4; TFO: SI 1978/272 Sch 3 para 7(5).
195	1989 s. 165.
196	1989 s. 149.
197	1989 s. 130.
198	1945 s. 7(1)–(5) & (7); 1965 Sch 2; 1977 Sch 1.
199	1963 s. 78(2)–(3) & (7); 1973 s. 9; 1989 Sch 13 paras 1 & 20.
200	1963 s. 17; 1973 s. 9; 1982(CJA) s. 38; 1989 Sch 13 paras 1 & 3.
201	1963 s. 114; 1973 s. 9; 1982(CJA) s. 38; 1989 Sch 13 para 1.
202	1989 ss. 118 & 121.
203	1989 s. 119.
204	1989 s. 174; R: 11.
205	1945 ss. 7(6) & (7) & 48(6); 1949 (c. 11) s. 1(1); 1977 Sch 1; TFOs: SI 1951/142 Sch; SI 1951/1900 art 1; SI 1965/319 Sch 3; SI 1970/1681 Sch 1.
206	1945 s. 45; 1963 s. 115; 1989 s. 175.
207	1989 s. 170(1)–(6) & (9).
208	1981 s. 6; 1986(GA) Sch 7 para 2(6); 1989 Sch 25 para 63; 1989(EA) Sch 16 para 1(5); 1990 (c. 11) Sch 2 para 46; 1991(NR) Sch 8 para 106.
209	1963 s. 31(5); 1989 s. 148.
210	1975 s. 28(6) & (8); 1989 s. 186 & Sch 17 para 7(7)(b).
211	1963 ss. 79(8) & (9) & 135(8); 1975 s. 28(7) & Sch 4 Pt I para 1(2); 1976 s. 34(4) & (5); 1977 Sch 6; 1982(CJA) s. 38; 1989 ss. 114(2), 121, 122 & 158(4) (d).
212	1975 Sch 3 paras 17 & 18; 1989 Sch 17 para 1; TFO: SI 1978/272 Sch 3 para 6.

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213	1963 s. 109(1); 1973 s. 9; 1989 s. 120 & Sch 13 para 1; TFOs: SI 1965/319 Sch 3 para 2; SI 1978/272 Sch 3 para 2(7).
214	1976 s. 96; 1982(CJA) s. 38; 1986 (c. 63) s. 42; TFO: SI 1978/272 Sch para 7.
215	1963 s. 109(2); 1989 s. 181 & Sch 13 para 26 & Sch 17 para 7(16).
216	1963 s. 118(1) & (2); 1973 s. 9; 1989 Sch 13 para 1.
217	1963 s. 118(3) & (4); 1989 ss. 121(1) & 177; R: 13.
218	1989 ss. 182 & 189(1) (definition of "services").
219	1963 s. 134; 1989 ss. 185 & 189(1) (definition of "prescribed").
220	1945 s. 56; 1963 s. 120; 1989 s. 187 & Sch 25 para 7(10); R: 14.
221	1945 s. 59(1) (definition of "owner"); 1963(L) Sch 14 para 10; 1963 ss. 2, 19(7), 120(5) & 135; 1976 ss. 32(5) & 116; 1981 s. 6(7)(b); 1985(LG) Sch 7 para 9; 1989 ss. 124, 127(6), 130(8), 135(1), 189 & 191(6) & Sch 13 paras 2 & 31 & Sch 15 para 38; 1990 (c. 11) Sch 2 para 81(1); 1991(NR) Sch 8 para 116(3). R: 6, 15, 16 & 20.
222	1963 s. 123(1) & (5); 1976 s. 115; 1989 s. 192; 1990 (c. 11) Sch 2 para 81(3).
223	1963 s. 123(1) & (5).
224	1989 s. 193.
225	1989 ss. 141(6) & 194.
Sch 1	1963 s. 120(5); 1976 s. 35; 1989 Sch 1, Pt I, paras. 1-10 & 14 & Sch 15 para 1.
Sch 2	1963 ss. 82, 106, 133(2)–(4), 134(4) & 135(1) & (2) & Sch 10; 1973 s. 9 & Sch 8 para 83; 1989 Sch 13 paras 1, 23, 25 & 33; TFOs: SI 1976/1775 Sch 3 para 7; SI 1979/571 Art 3(5); SI 1981/238 Arts 2 & 3(4); R: 16.
Sch 3	1989 Sch 16.
Sch 4	1976 Sch 1; 1982 (c. 32) Sch 5 para 7; 1983 Sch 4 paras 5 & 6; 1985 (c. 65)



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	Sch 8, para 29; 1989 Sch 15 paras 1 & 39; TFO: SI 1978/272 Sch 3 para 7(5).
Sch 5	1963 s. 135(1) & Sch 7; 1973 s. 9; 1989 Sch 13 paras 1 and 32; 1989(EA) Sch 16 para 10; TFOs: SI 1970/1681 Sch 3 para 9(1); 1983/1127 Art 2(3).
Sch 6	1963 ss. 25(5)–(8) & 135(1) & Sch 7; 1973 s. 9; 1989 Sch 13 paras 1 and 32; 1989(EA) Sch 16 para 10; TFOs: SI 1965/145 Sch 1; SI 1970/1537 art 2(1); SI 1970/1681 Sch 3 para 9; SI 1974/692 Sch 1 Pt III; SI 1983/1127 Art 2(3); R: 4.
Sch 7	1963 ss. 46(3) & 50(4) & (5); 1989 Sch 26 paras 30–33.
Sch 8	1989 Sch 14 paras. 1–3.
Sch 9	1989 s. 135(1) & Sch 14 paras. 5–8.
Sch 10	1989 s. 176 & Sch 12 paras 1–7.
Sch 11	1989 Sch 7.
Sch 12	1989 Sch 11.
Sch 13	1989 Sch 26 Pt III.
Sch 14	1976 s. 10(2) & (3) & 109(5)(b) and Sch 3 paras 1–4 and 9–14; TFO: SI 1978/272 Sch 3 para 7(12).
Sch 15	1976 ss. 52–61; 1989 Sch 15 paras 1, 24 & 25; SI 1978/319 Sch 5 para 5; SI 1990/214 Reg 5; TFO: SI 1978/272 Sch 3 para 7(5).
Sch 16	1976 ss. 50(4)–(8) & 109(6); 1989 Sch 15 para 1; SI 1991/983; TFO: SI 1978/272 Sch 3 para 7(5).
Sch 17	1976 ss. 88(3) & (4) & 109(1), (4) & (5) & Sch 3 paras 5 to 8.
Sch 18	1989 Sch 18.
Sch 19	1989 Sch 20.
Sch 20	1989 ss. 147(3), 156(6) 178 & 179 & Sch 19 para 10(4) & (5); 1991(NR) Sch 8 para 116(4).
Sch 21	1976 ss. 17(5) & 33(4); 1989 Sch 15 para 1 & Sch 19 paras 2(4)–(6), 6 & 8(2)–(4).
Sch 22	1976 ss. 29(8) & 112; 1984 Sch 4 para 66(2); 1984 (c. 32) Sch 6 para 12; 1986 (c. 31) Sch 2 para 5; 1986 (c. 44) Sch

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	7 para 25; 1987 (c. 3) Sch 1 para 32; 1989 s. 160(1)–(3), (6) & (8) & Sch 15 para 37 & Sch 19 paras 2(9) & 3; 1989 (c. 29) Sch 16 paras 21 & 37; 1991(NR) Sch 8 para 116(4); R: 17.
Sch 23	1989 Sch 21.
Sch 24	1989 s. 174(2)(d) & (3).
Sch 25	1963 s. 79(3)–(6); 1973 s. 9; 1975 Sch 3 paras 14–16 & 19–36; 1976 s. 34; 1986 (c.62) s. 33(3); 1989 ss. 114, 158, Sch 13 para 21, Sch 15 para 15(1) & Sch 17 para 7(14)(c) & (d); R: 5.
Sch 26	1989 Sch 24.

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