



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART III **E+W**

#### CONTROL OF POLLUTION OF WATER RESOURCES

### CHAPTER III **E+W**

#### POWERS TO PREVENT AND CONTROL POLLUTION

#### **92 Requirements to take precautions against pollution. **E+W****

- (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>F1</sup>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>F1</sup>Agency] in pursuance of provision made by virtue of paragraph (a) above; and

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- (c) provide that a contravention of the regulations shall be an offence the maximum penalties for which shall not exceed the penalties specified in subsection (6) of section 85 above.

[<sup>F2</sup>(3) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).]

#### Textual Amendments

- F1** Words in s. 92 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)
- F2** 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)

- C1** S. 92 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).
- C2** 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)

### 93 Water protection zones. **E+W**

- (1) Where the Secretary of State considers, after consultation (in the case of an area wholly or partly in England) with the Minister, that subsection (2) below is satisfied in relation to any area, he may by order make provision—
- (a) designating that area as a water protection zone; and
  - (b) prohibiting or restricting the carrying on in the designated area of such activities as may be specified or described in the order.
- (2) For the purposes of subsection (1) above this subsection is satisfied in relation to any area if (subject to subsection (3) below) 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 Secretary of State considers are likely to result in the pollution of any such waters.
- (3) The reference in subsection (2) above to the entry of poisonous, noxious or polluting matter into controlled waters shall not include a reference to the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use of any land for agricultural purposes
- (4) Without prejudice to the generality of the power conferred by virtue of subsection (1) above, an order under this section may—
- (a) confer power on the [<sup>F3</sup>Agency] to determine for the purposes of the order the circumstances in which the carrying on of any activities is prohibited or restricted and to determine the activities to which any such prohibition or restriction 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>F3</sup>Agency] or in contravention of any conditions subject to which any such consent is given;
  - (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 shall be an offence the maximum penalties for which shall not exceed the penalties specified in subsection (6) of section 85 above;

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- (d) provide (subject to any regulations under section 96 below) for anything falling to be determined under the order by the [F<sup>3</sup>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 Secretary of State considers appropriate.
- (5) 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; but the Secretary of State shall not make such an order except on an application made by the [F<sup>3</sup>Agency] in accordance with Schedule 11 to this Act and otherwise in accordance with that Schedule.

#### Textual Amendments

**F3** Words in s. 93 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)

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

**C3** 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)**.

**C4** S. 93 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).

## 94 Nitrate sensitive areas. **E+W**

- (1) Where the relevant Minister considers that it is appropriate to do so with a view to achieving the purpose specified in subsection (2) below in relation to any land, he may by order make provision designating that land, together with any other land to which he considers it appropriate to apply the designation, as a nitrate sensitive area.
- (2) The purpose mentioned in subsection (1) above is preventing or controlling the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use for agricultural purposes of any land.
- (3) Where it appears to the relevant Minister, in relation to any area which is or is to be designated by an order under this section as a nitrate sensitive area, that it is appropriate for provision for the imposition of requirements, prohibitions or restrictions to be contained in an order under this section (as well as for him to be able to enter into such agreements as are mentioned in section 95 below), he may, by a subsequent order under this section or, as the case may be, by the order designating that area—
  - (a) with a view to achieving the purpose specified in subsection (2) above, require, prohibit or restrict the carrying on, either on or in relation to any agricultural land in that area, of such activities as may be specified or described in the order; and
  - (b) provide for such amounts (if any) as may be specified in or determined under the order to be paid by one of the Ministers, to such persons as may be so specified or determined, in respect of the obligations imposed in relation to that area on those persons by virtue of paragraph (a) above.

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- (4) Without prejudice to the generality of subsection (3) above, provision contained in an order under this section by virtue of that subsection may—
- (a) confer power on either of the Ministers to determine for the purposes of the order the circumstances in which the carrying on of any activities is required, prohibited or restricted and to determine the activities to which any such requirement, prohibition or restriction applies;
  - (b) provide for any requirement to carry on any activity not to apply in cases where one of the Ministers has consented to a failure to carry on that activity and any conditions on which the consent has been given are complied with;
  - (c) apply a prohibition or restriction in respect of any activities to cases where the activities are carried on without the consent of one of the Ministers or in contravention of any conditions subject to which any such consent is given;
  - (d) provide that a contravention of a requirement, prohibition or restriction contained in the order or in a condition of a consent given in relation to or for the purposes of any such requirement, prohibition or restriction shall be an offence the maximum penalties for which shall not exceed the penalties specified in subsection (6) of section 85 above;
  - (e) provide for amounts paid in pursuance of any provision contained in the order to be repaid at such times and in such circumstances, and with such interest, as may be specified in or determined under the order; and
  - (f) provide (subject to any regulations under section 96 below) for anything falling to be determined under the order by any person to be determined in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be specified in the order.
- (5) 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 relevant Minister considers appropriate.
- (6) The power of the relevant Minister 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; but the relevant Minister shall not make such an order except in accordance with any applicable provisions of Schedule 12 to this Act.
- (7) In this section and in Schedule 12 to this Act “the relevant Minister”—
- (a) in relation to the making of an order in relation to an area which is wholly in England or which is partly in England and partly in Wales, means the Ministers; and
  - (b) in relation to the making of an order in relation to an area which is wholly in Wales, means the Secretary of State.

## 95 **Agreements in nitrate sensitive areas.** E+W

- (1) Where—
- (a) any area has been designated as a nitrate sensitive area by an order under section 94 above; and
  - (b) the relevant Minister considers that it is appropriate to do so with a view to achieving the purpose mentioned in subsection (2) of that section,

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he may, subject to such restrictions (if any) as may be set out in the order, enter into an agreement falling within subsection (2) below.

- (2) An agreement falls within this subsection if it is one under which, in consideration of payments to be made by the relevant Minister—
  - (a) the owner of the freehold interest in any agricultural land in a nitrate sensitive area; or
  - (b) where the owner of the freehold interest in any such land has given his written consent to the agreement being entered into by any person having another interest in that land, that other person,  
accepts such obligations with respect to the management of that land or otherwise as may be imposed by the agreement.
- (3) An agreement such as is mentioned in subsection (2) above between the relevant Minister and a person having an interest in any land shall bind all persons deriving title from or under that person to the extent that the agreement is expressed to bind that land in relation to those persons.
- (4) In this section “the relevant Minister”—
  - (a) in relation to an agreement with respect to land which is wholly in England, means the Minister;
  - (b) in relation to an agreement with respect to land which is wholly in Wales, means the Secretary of State; and
  - (c) in relation to an agreement with respect to land which is partly in England and partly in Wales, means either of the Ministers.

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

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- (1) The Secretary of State may, for the purposes of any orders under section 93 above which require the consent of the [<sup>F4</sup>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>F4</sup>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.
- (2) The Ministers may, for the purposes of any orders under section 94 above which require the consent of either of those Ministers to the carrying on of any activities or to any failure to carry on any activity, by regulations make provision with respect to—
  - (a) applications for any such consent;
  - (b) the conditions of any such consent;
  - (c) the revocation or variation of any such consent;
  - (d) the reference to arbitration of disputes about determinations on any such application;

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- (e) the imposition of charges where such an application has been made, such a consent has been given or there has been any act or omission in pursuance of any such consent; and
  - (f) the registration of any such application or consent.
- (3) Without prejudice to the generality of the powers conferred by the preceding provisions of this section, regulations under subsection (1) above may apply (with or without modifications) any enactment having effect in relation to consents under Chapter II of this Part.
- [<sup>F5</sup>(4) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).]

#### Textual Amendments

- F4** Words in s. 96 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)
- F5** 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)

- C5** 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. E+W

- (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
  - (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>F6</sup>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—
- (a) its power, by giving a notice under subsection (1) of section 86 above, to impose a prohibition under that section; and
  - (b) any powers conferred on the [<sup>F6</sup>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>F6</sup>Agency].

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### Textual Amendments

- F6** Words in s. 97 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)

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