

Status: Point in time view as at 21/11/1996.

Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, Schedule 10. (See end of Document for details)

SCHEDULES

[^{F1}SCHEDULE 10] E+W

DISCHARGE CONSENTS

Textual Amendments

- F1** Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)

[^{F2} Application for consent

Textual Amendments

- F2** Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)

- ^{F3}1 (1) An application for a consent, for the purposes of section 88(1)(a) of this Act, for any discharges—
- (a) shall be made to the Agency on a form provided for the purpose by the Agency; and
 - (b) must be advertised by or on behalf of the applicant in such manner as may be required by regulations made by the Secretary of State.
- (2) Regulations made by the Secretary of State may make provision for enabling the Agency to direct or determine that any such advertising of an application as is required under sub-paragraph (1)(b) above may, in any case, be dispensed with if, in that case, it appears to the Agency to be appropriate for that advertising to be dispensed with.
- (3) The applicant for such a consent must provide to the Agency, either on, or together with, the form mentioned in sub-paragraph (1) above—
- (a) such information as the Agency may reasonably require; and
 - (b) such information as may be prescribed for the purpose by the Secretary of State;
- but, subject to paragraph 3(3) below and without prejudice to the effect (if any) of any other contravention of the requirements of this Schedule in relation to an application under this paragraph, a failure to provide information in pursuance of this sub-paragraph shall not invalidate an application.
- (4) The Agency may give the applicant notice requiring him to provide it with such further information of any description specified in the notice as it may require for the purpose of determining the application.

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- (5) An application made in accordance with this paragraph which relates to proposed discharges at two or more places may be treated by the Agency as separate applications for consents for discharges at each of those places.]

Textual Amendments

- F3** Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)

F4 Consultation in connection with applications

Textual Amendments

- F4** Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)

- F52** (1) Subject to sub-paragraph (2) below, the Agency shall give notice of any application under paragraph 1 above, together with a copy of the application, to the persons who are prescribed or directed to be consulted under this paragraph and shall do so within the specified period for notification.
- (2) The Secretary of State may, by regulations, exempt any class of application from the requirements of this paragraph or exclude any class of information contained in applications from those requirements, in all cases or as respects specified classes only of persons to be consulted.
- (3) Any representations made by the persons so consulted within the period allowed shall be considered by the Agency in determining the application.
- (4) For the purposes of sub-paragraph (1) above—
- (a) persons are prescribed to be consulted on any description of application if they are persons specified for the purposes of applications of that description in regulations made by the Secretary of State;
 - (b) persons are directed to be consulted on any particular application if the Secretary of State specifies them in a direction given to the Agency;
- and the “specified period for notification” is the period specified in the regulations or in the direction.
- (5) Any representations made by any other persons within the period allowed shall also be considered by the Agency in determining the application.
- (6) Subject to sub-paragraph (7) below, the period allowed for making representations is—
- (a) in the case of persons prescribed or directed to be consulted, the period of six weeks beginning with the date on which notice of the application was given under sub-paragraph (1) above, and
 - (b) in the case of other persons, the period of six weeks beginning with the date on which the making of the application was advertised in pursuance of paragraph 1(1)(b) above.

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- (7) The Secretary of State may, by regulations, substitute for any period for the time being specified in sub-paragraph (6)(a) or (b) above, such other period as he considers appropriate.

Textual Amendments

- F5** Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)

^{F6}Consideration and determination of applications

Textual Amendments

- F6** Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)

- ^{F73} (1) On an application under paragraph 1 above the Agency shall be under a duty, if the requirements—
- (a) of that paragraph, and
 - (b) of any regulations made under paragraph 1 or 2 above or of any directions under paragraph 2 above,
- are complied with, to consider whether to give the consent applied for, either unconditionally or subject to conditions, or to refuse it.
- (2) Subject to the following provisions of this Schedule, on an application made in accordance with paragraph 1 above, the applicant may treat the consent applied for as having been refused if it is not given within the period of four months beginning with the day on which the application is received or within such longer period as may be agreed in writing between the Agency and the applicant.
- (3) Where any person, having made an application to the Agency for a consent, has failed to comply with his obligation under paragraph 1(3) or (4) above to provide information to the Agency, the Agency may refuse to proceed with the application, or refuse to proceed with it until the information is provided.
- (4) The conditions subject to which a consent may be given under this paragraph shall be such conditions as the Agency may think fit and, in particular, may include conditions—
- (a) as to the places at which the discharges to which the consent relates may be made and as to the design and construction of any outlets for the discharges;
 - (b) as to the nature, origin, composition, temperature, volume and rate of the discharges and as to the periods during which the discharges may be made;
 - (c) as to the steps to be taken, in relation to the discharges or by way of subjecting any substance likely to affect the description of matter discharged to treatment or any other process, for minimising the polluting effects of the discharges on any controlled waters;
 - (d) as to the provision of facilities for taking samples of the matter discharged and, in particular, as to the provision, maintenance and use of manholes, inspection chambers, observation wells and boreholes in connection with the discharges;

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- (e) as to the provision, maintenance and testing of meters for measuring or recording the volume and rate of the discharges and apparatus for determining the nature, composition and temperature of the discharges;
- (f) as to the keeping of records of the nature, origin, composition, temperature, volume and rate of the discharges and, in particular, of records of readings of meters and other recording apparatus provided in accordance with any other condition attached to the consent; and
- (g) as to the making of returns and the giving of other information to the Authority about the nature, origin, composition, temperature, volume and rate of the discharges;

and it is hereby declared that a consent may be given under this paragraph subject to different conditions in respect of different periods.

- (5) The Secretary of State may, by regulations, substitute for any period for the time being specified in sub-paragraph (2) above, such other period as he considers appropriate.

Textual Amendments

F7 Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)

- F84** The Secretary of State may give the Agency a direction with respect to any particular application, or any description of applications, for consent under paragraph 1 above requiring the Agency not to determine or not to proceed with the application or applications of that description until the expiry of any such period as may be specified in the direction, or until directed by the Secretary of State that it may do so, as the case may be.

Textual Amendments

F8 Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)

F9 Reference to Secretary of State of certain applications for consent

Textual Amendments

F9 Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)

- F105** (1) The Secretary of State may, either in consequence of representations or objections made to him or otherwise, direct the Agency to transmit to him for determination such applications for consent under paragraph 1 above as are specified in the direction or are of a description so specified.
- (2) Where a direction is given to the Agency under this paragraph, the Agency shall comply with the direction and inform every applicant to whose application the direction relates of the transmission of his application to the Secretary of State.

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- (3) Paragraphs 1(1) and 2 above shall have effect in relation to an application transmitted to the Secretary of State under this paragraph with such modifications as may be prescribed.
- (4) Where an application is transmitted to the Secretary of State under this paragraph, the Secretary of State may at any time after the application is transmitted and before it is granted or refused—
 - (a) cause a local inquiry to be held with respect to the application; or
 - (b) afford the applicant and the Agency an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) The Secretary of State shall exercise his power under sub-paragraph (4) above in any case where a request to be heard with respect to the application is made to him in the prescribed manner by the applicant or by the Agency.
- (6) It shall be the duty of the Secretary of State, if the requirements of this paragraph and of any regulations made under it are complied with, to determine an application for consent transmitted to him by the Agency under this paragraph by directing the Agency to refuse its consent or to give its consent under paragraph 3 above (either unconditionally or subject to such conditions as are specified in the direction).
- (7) Without prejudice to any of the preceding provisions of this paragraph, the Secretary of State may by regulations make provision for the purposes of, and in connection with, the consideration and disposal by him of applications transmitted to him under this paragraph.

Textual Amendments

F10 Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 183 (with ss. 7(6), 115, 117); S.I. 1996/2909, arts. 2, 3 (with art. 4)

F11 Consents without applications

Textual Amendments

F11 Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 183 (with ss. 7(6), 115, 117); S.I. 1996/2909, arts. 2, 3 (with art. 4)

- ^{F126} (1) If it appears to the Agency—
- (a) that a person has caused or permitted effluent or other matter to be discharged in contravention—
 - (i) of the obligation imposed by virtue of section 85(3) of this Act; or
 - (ii) of any prohibition imposed under section 86 of this Act; and
 - (b) that a similar contravention by that person is likely,
- the Agency may, if it thinks fit, serve on him an instrument in writing giving its consent, subject to any conditions specified in the instrument, for discharges of a description so specified.
- (2) A consent given under this paragraph shall not relate to any discharge which occurred before the instrument containing the consent was served on the recipient of the instrument.

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- (3) Sub-paragraph (4) of paragraph 3 above shall have effect in relation to a consent given under this paragraph as it has effect in relation to a consent given under that paragraph.
- (4) Where a consent has been given under this paragraph, the Agency shall publish notice of the consent in such manner as may be prescribed by the Secretary of State and send copies of the instrument containing the consent to such bodies or persons as may be so prescribed.
- (5) It shall be the duty of the Agency to consider any representations or objections with respect to a consent under this paragraph as are made to it in such manner, and within such period, as may be prescribed by the Secretary of State and have not been withdrawn.
- (6) Where notice of a consent is published by the Agency under sub-paragraph (4) above, the Agency shall be entitled to recover the expenses of publication from the person on whom the instrument containing the consent was served.

Textual Amendments

F12 Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 183 (with ss. 7(6), 115, 117); S.I. 1996/2909, arts. 2, 3 (with art. 4)

F13 Revocation of consents and alteration and imposition of conditions

Textual Amendments

F13 Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 183 (with ss. 7(6), 115, 117); S.I. 1996/2909, arts. 2, 3 (with art. 4)

- F147**
- (1) The Agency may from time to time review any consent given under paragraph 3 or 6 above and the conditions (if any) to which the consent is subject.
 - (2) Subject to such restrictions on the exercise of the power conferred by this sub-paragraph as are imposed under paragraph 8 below, where the Agency has reviewed a consent under this paragraph, it may by a notice served on the person making a discharge in pursuance of the consent—
 - (a) revoke the consent;
 - (b) make modifications of the conditions of the consent; or
 - (c) in the case of an unconditional consent, provide that it shall be subject to such conditions as may be specified in the notice.
 - (3) If on a review under sub-paragraph (1) above it appears to the Agency that no discharge has been made in pursuance of the consent to which the review relates at any time during the preceding twelve months, the Agency may revoke the consent by a notice served on the holder of the consent.
 - (4) If it appears to the Secretary of State appropriate to do so—
 - (a) for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to any Community obligation or to any international agreement to which the United Kingdom is for the time being a party;

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- (b) for the protection of public health or of flora and fauna dependent on an aquatic environment; or
- (c) in consequence of any representations or objections made to him or otherwise,

he may, subject to such restrictions on the exercise of the power conferred by virtue of paragraph (c) above as are imposed under paragraph 8 below, at any time direct the Agency, in relation to a consent given under paragraph 3 or 6 above, to do anything mentioned in sub-paragraph (2)(a) to (c) above.

- (5) The Agency shall be liable to pay compensation to any person in respect of any loss or damage sustained by that person as a result of the Agency's compliance with a direction given in relation to any consent by virtue of sub-paragraph (4)(b) above if—
 - (a) in complying with that direction the Agency does anything which, apart from that direction, it would be precluded from doing by a restriction imposed under paragraph 8 below; and
 - (b) the direction is not shown to have been given in consequence of—
 - (i) a change of circumstances which could not reasonably have been foreseen at the beginning of the period to which the restriction relates; or
 - (ii) consideration by the Secretary of State of material information which was not reasonably available to the Agency at the beginning of that period.
- (6) For the purposes of sub-paragraph (5) above information is material, in relation to a consent, if it relates to any discharge made or to be made by virtue of the consent, to the interaction of any such discharge with any other discharge or to the combined effect of the matter discharged and any other matter.

Textual Amendments

F14 Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)

^{F15}Restriction on variation and revocation of consent and previous variation

Textual Amendments

F15 Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)

- ^{F16g} (1) Each instrument signifying the consent of the Agency under paragraph 3 or 6 above shall specify a period during which no notice by virtue of paragraph 7(2) or (4)(c) above shall be served in respect of the consent except, in the case of a notice doing anything mentioned in paragraph 7(2)(b) or (c), with the agreement of the holder of the consent.
- (2) Each notice served by the Agency by virtue of paragraph 7(2) or (4)(c) above (except a notice which only revokes a consent) shall specify a period during which a subsequent such notice which alters the effect of the first-mentioned notice shall not be served except, in the case of a notice doing anything mentioned in paragraph 7(2) (b) or (c) above, with the agreement of the holder of the consent.

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- (3) The period specified under sub-paragraph (1) or (2) above in relation to any consent shall not, unless the person who proposes to make or makes discharges in pursuance of the consent otherwise agrees, be less than the period of four years beginning—
- (a) in the case of a period specified under sub-paragraph (1) above, with the day on which the consent takes effect; and
 - (b) in the case of a period specified under sub-paragraph (2) above, with the day on which the notice specifying that period is served.
- (4) A restriction imposed under sub-paragraph (1) or (2) above shall not prevent the service by the Agency of a notice by virtue of paragraph 7(2) or (4)(c) above in respect of a consent given under paragraph 6 above if—
- (a) the notice is served not more than three months after the beginning of the period prescribed under paragraph 6(5) above for the making of representations and objections with respect to the consent; and
 - (b) the Agency or, as the case may be, the Secretary of State considers, in consequence of any representations or objections received by it or him within that period, that it is appropriate for the notice to be served.
- (5) A restriction imposed under sub-paragraph (1) or (2) above shall not prevent the service by the Agency of a notice by virtue of paragraph 7(2)(b) or (c) or (4)(c) above in respect of a consent given under paragraph 6 above if the holder has applied for a variation under paragraph 10 below.

Textual Amendments

F16 Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 183 (with ss. 7(6), 115, 117); S.I. 1996/2909, arts. 2, 3 (with art. 4)

F17 General review of consents

Textual Amendments

F17 Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 183 (with ss. 7(6), 115, 117); S.I. 1996/2909, arts. 2, 3 (with art. 4)

- ^{F18}9 (1) If it appears appropriate to the Secretary of State to do so he may at any time direct the Agency to review—
- (a) the consents given under paragraph 3 or 6 above, or
 - (b) any description of such consents,
- and the conditions (if any) to which those consents are subject.
- (2) A direction given by virtue of sub-paragraph (1) above—
- (a) shall specify the purpose for which, and
 - (b) may specify the manner in which,
- the review is to be conducted.
- (3) After carrying out a review pursuant to a direction given by virtue of sub-paragraph (1) above, the Agency shall submit to the Secretary of State its proposals (if any) for—

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- (a) the modification of the conditions of any consent reviewed pursuant to the direction, or
 - (b) in the case of any unconditional consent reviewed pursuant to the direction, subjecting the consent to conditions.
- (4) Where the Secretary of State has received any proposals from the Agency under sub-paragraph (3) above in relation to any consent he may, if it appears appropriate to him to do so, direct the Agency to do, in relation to that consent, anything mentioned in paragraph 7(2)(b) or (c) above.
- (5) A direction given by virtue of sub-paragraph (4) above may only direct the Agency to do, in relation to any consent,—
- (a) any such thing as the Agency has proposed should be done in relation to that consent, or
 - (b) any such thing with such modifications as appear to the Secretary of State to be appropriate.

Textual Amendments

F18 Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 183 (with ss. 7(6), 115, 117); S.I. 1996/2909, arts. 2, 3 (with art. 4)

F19 Applications for variation

Textual Amendments

F19 Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 183 (with ss. 7(6), 115, 117); S.I. 1996/2909, arts. 2, 3 (with art. 4)

- F20**¹⁰ (1) The holder of a consent under paragraph 3 or 6 above may apply to the Agency, on a form provided for the purpose by the Agency, for the variation of the consent.
- (2) The provisions of paragraphs 1 to 5 above shall apply (with the necessary modifications) to applications under sub-paragraph (1) above, and to the variation of consents in pursuance of such applications, as they apply to applications for, and the grant of, consents.

Textual Amendments

F20 Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 183 (with ss. 7(6), 115, 117); S.I. 1996/2909, arts. 2, 3 (with art. 4)

F21 Transfer of consents

Textual Amendments

F21 Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 183 (with ss. 7(6), 115, 117); S.I. 1996/2909, arts. 2, 3 (with art. 4)

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- ^{F22}11 (1) A consent under paragraph 3 or 6 above may be transferred by the holder to a person who proposes to carry on the discharges in place of the holder.
- (2) On the death of the holder of a consent under paragraph 3 or 6 above, the consent shall, subject to sub-paragraph (4) below, be regarded as property forming part of the deceased's personal estate, whether or not it would be so regarded apart from this sub-paragraph, and shall accordingly vest in his personal representatives.
- (3) If a bankruptcy order is made against the holder of a consent under paragraph 3 or 6 above, the consent shall, subject to sub-paragraph (4) below, be regarded for the purposes of any of the Second Group of Parts of the ^{M1}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 sub-paragraph, and shall accordingly vest as such in the trustee in bankruptcy.
- (4) Notwithstanding anything in the foregoing provisions of this paragraph, a consent under paragraph 3 or 6 above (and the obligations arising out of, or incidental to, such a consent) shall not be capable of being disclaimed.
- (5) A consent under paragraph 3 or 6 above which is transferred to, or which vests in, a person under this section shall have effect on and after the date of the transfer or vesting as if it had been granted to that person under paragraph 3 or 6 above, subject to the same conditions as were attached to it immediately before that date.
- (6) Where a consent under paragraph 3 or 6 above is transferred under sub-paragraph (1) above, the person from whom it is transferred shall give notice of that fact to the Agency not later than the end of the period of twenty-one days beginning with the date of the transfer.
- (7) Where a consent under paragraph 3 or 6 above vests in any person as mentioned in sub-paragraph (2) or (3) above, that person shall give notice of that fact to the Agency not later than the end of the period of fifteen months beginning with the date of the vesting.
- (8) If—
- (a) a consent under paragraph 3 or 6 above vests in any person as mentioned in sub-paragraph (2) or (3) above, but
 - (b) that person fails to give the notice required by sub-paragraph (7) above within the period there mentioned,
- the consent, to the extent that it permits the making of any discharges, shall cease to have effect.
- (9) A person who fails to give a notice which he is required by sub-paragraph (6) or (7) above to give 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.

Textual Amendments

F22 Sch. 10 substituted (21.11.1996 for certain purposes otherwise 31.12.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 183** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)

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Modifications etc. (not altering text)

C1 Sch. 10 para. 11 applied (with modifications) (1.1.1999 for certain purposes otherwise 1.4.1999) by [S.I. 1998/2746](#), [reg. 14\(4\)](#)

Marginal Citations

M1 1986 c. 45.

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