

*Status: Point in time view as at 01/06/2009.*

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## SCHEDULES

### <sup>F1</sup>SCHEDULE 1

#### Textual Amendments

- F1** Sch. 1 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 178, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**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)

- C1** 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>F2</sup>Agency] may at any time apply to the Ministers for an order under this Schedule transferring to the [<sup>F2</sup>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>F2</sup>Agency] and the other body concerned.
- (4) Where, in accordance with this paragraph, the [<sup>F2</sup>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

- F2** Words in Sch. 2 para. 1 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**

#### *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>F3</sup>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>F3</sup>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

- F3** Words in Sch. 2 para. 2 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**

#### *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>F4</sup>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

- F4** Word in Sch. 2 para. 3 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**

#### *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>M2</sup>Water Resources Act 1963.

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#### Marginal Citations

- M2** 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>F5</sup>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>F5</sup>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>F5</sup>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

- F5** Words in Sch. 2 para. 5 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**

### *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>M3</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

**M3** 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 [<sup>F6</sup>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 [<sup>F6</sup>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 [<sup>F6</sup>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 <sup>M4</sup>Finance Act 1895 (which provides for charging stamp duty in the case of certain statutory transfers by way of sale).
- [<sup>F7</sup>(3) A land transaction by which property is vested in the 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

- F6** Words in Sch. 2 para. 8 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**
- F7** 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

**M4** 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.

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- (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 [F8Agency], 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 [F8Agency] 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**

**F8** Words in Sch. 2 para. 10 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**

*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.

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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>M5</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**

**M5** 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>F9</sup>SCHEDULE 3

**Textual Amendments**

**F9** 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>F10</sup>SCHEDULE 4

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### Textual Amendments

**F10** 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 [<sup>F11</sup>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 [<sup>F11</sup>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>F12</sup>the Secretary of State for Transport];
  - (g) any person authorised by a licence under Part I of the <sup>M12</sup>Electricity Act 1989 to generate electricity <sup>F13</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>F11</sup>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 [Agency] have required him to pay a reasonable charge for being so notified, has paid that charge.
- (4) The <sup>F11</sup>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

- F11** Word in Sch. 5 para. 2 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**
- F12** Words in Sch. 5 para. 2(3)(f) substituted (25.11.2002) by S.I. 2002/2626, **art. 20, Sch. 2 para. 18(3)**
- F13** 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)

- C3** 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

- M12** 1989 c. 29.

#### *Duty to provide copy of draft statement*

- 3 The <sup>F14</sup>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>F14</sup>Agency] thinks reasonable.

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#### Textual Amendments

**F14** Words in Sch. 5 para. 3 substituted (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**

#### *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>F15</sup>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>F15</sup>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

**F15** Words in SCh. 5 para. 4 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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*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>F16</sup>Agency] or with alterations, the Secretary of State shall give notice to the [<sup>F16</sup>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>F16</sup>Agency] shall forthwith publish the notice.
- (2) The [<sup>F16</sup>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**

**F16** Words in Sch. 5 para. 5 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**

[<sup>F17</sup>SCHEDULE 6

Sections 27A(4) and 39B(7)

ORDERS RELATING TO ABSTRACTION OF SMALL QUANTITIES  
AND COMPULSORY REGISTRATION OF PROTECTED RIGHTS

**Textual Amendments**

**F17** 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 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 Agency shall serve a copy of the notice on—
- (a) every local authority (in its capacity as the local planning authority), joint planning board or National Park authority 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) [F18Natural England] , if the area to which the order relates is or includes England, or part of it;
  - (h) the Countryside Council for Wales, if the area to which the order relates is or includes Wales, or part of it; and
  - (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 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—
- (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

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- 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;
- (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 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 Agency’s opinion, be affected by changes in the level or flow of the waters in a relevant source of supply.

#### Textual Amendments

- F18** 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.)

#### *Duty to provide copy of draft order*

- 2 Where an application for an order is made, the Agency shall, at the request of any person, furnish him with a copy of the draft order on payment of such charge as the Agency thinks reasonable.

#### *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 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—

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- (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 Agency to apply for the order, from the 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 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
  - (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.

*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 Agency or with alterations, the Secretary of State shall give notice to the 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 Agency shall forthwith publish the notice.
- (2) The 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.]

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## 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>M13</sup>Water Act 1989 shall continue to apply (notwithstanding the repeals made by the <sup>M14</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;
- but for the purposes of any such application or appeal any reference in those paragraphs to a provision of the <sup>M15</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>M16</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>F19</sup>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>F19</sup>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,

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so far as necessary for the purposes of this paragraph, anything done under or for the purposes of a provision of the <sup>M17</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

**F19** Words in Sch. 7 para. 1 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**

#### Marginal Citations

**M13** 1989 c. 15.  
**M14** 1991 c. 60.  
**M15** 1963 c. 38.  
**M16** 1965 c. 36.  
**M17** 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>F20</sup>Agency] in pursuance of section 60 of this Act (liability of the [<sup>F20</sup>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>F20</sup>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>F20</sup>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>F20</sup>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



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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

**F20** Words in Sch. 7 para. 4 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**

#### *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>M18</sup>Water Act 1989; or
- (b) any licence which, having been granted in pursuance of an application under section 33 of the <sup>M19</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>M20</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

**M18** 1989 c. 15.  
**M19** 1963 c. 38.  
**M20** 1991 c. 60.

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## 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—

TABLE

All orders	(a) The [ <sup>F21</sup> Agency] (where it is not the applicant). (b) Every local authority (not being [ <sup>F22</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>F22</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 consent relating to the discharge of sewage effluent or trade effluent, the person to whom the consent was given.
Orders which authorise the carrying out of any works.	(a) Every local authority (not being [ <sup>F22</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.

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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—
- shall state the general effect of the application;
  - 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;
  - 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
  - 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

- F21** 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**
- F22** Words in Sch. 8 para. 1(2) Table substituted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. 1 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**

#### *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—
- cause a local inquiry to be held; or
  - afford an opportunity—
    - to the objector; and
    - 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.

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- (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—
- (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>F23</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), 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**

**F23** 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](#))

#### *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 consent 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 consent or the attachment of conditions to the consent.

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*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>F24</sup>Upper Tribunal].

**Textual Amendments**

**F24** 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 consent 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>F25</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 a consent originally given.
- (3) In assessing the compensation to be made under paragraph 2(2) above the [<sup>F26</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>F27</sup>Upper Tribunal] may, if it thinks fit, have regard to the amount of water which, under the conditions existing by 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.

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#### Textual Amendments

- F25** 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)
- F26** 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)
- F27** 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>F28</sup>SCHEDULE 10]

### DISCHARGE CONSENTS

#### Textual Amendments

- F28** 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)

### *[<sup>F29</sup> Application for consent*

#### Textual Amendments

- F29** 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)

- <sup>F30</sup>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.

*Status: Point in time view as at 01/06/2009.*

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- (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.
- (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

**F30** 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)

#### *F31 Consultation in connection with applications*

#### Textual Amendments

**F31** 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)

- <sup>F32</sup>2 (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



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- (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.
- (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

**F32** 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)

#### <sup>F33</sup> *Consideration and determination of applications*

#### Textual Amendments

**F33** 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)

- <sup>F34</sup> (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;

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- (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;
- (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

**F34** 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)

- <sup>F35</sup><sub>4</sub> 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

**F35** 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)

<sup>F36</sup>*Reference to Secretary of State of certain applications for consent*

#### Textual Amendments

**F36** 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)

- <sup>F37</sup><sub>5</sub> (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.

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- (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.
- (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

**F37** 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)

#### *F38 Consents without applications*

#### Textual Amendments

**F38** 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)

- F39** (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.

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- (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.
- (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

**F39** 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)

#### <sup>F40</sup>*Revocation of consents and alteration and imposition of conditions*

#### Textual Amendments

**F40** 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)

- <sup>F417</sup> (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—

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- (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;
- (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

- F41** 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)

#### *F42* Restriction on variation and revocation of consent and previous variation

#### Textual Amendments

- F42** 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)

- <sup>F43</sup>8 (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

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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.

- (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

**F43** 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)

#### *F44* General review of consents

#### Textual Amendments

**F44** 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)

- F45** (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.

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- (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—
  - (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

**F45** 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)

#### *F46 Applications for variation*

#### Textual Amendments

**F46** 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)

- <sup>F47</sup>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

**F47** 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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### <sup>F48</sup>Transfer of consents

#### Textual Amendments

**F48** 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)

- <sup>F49</sup>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<sup>F50</sup>...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<sup>F51</sup>... be regarded for the purposes of any of the Second Group of Parts of the <sup>M21</sup>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.
- <sup>F52</sup>(4) .....
- (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.
- <sup>F53</sup>(6) Where a consent under paragraph 3 or 6 above is to be transferred under sub-paragraph (1) above—
- (a) the person from whom and the person to whom the consent is to be transferred shall give joint notice to the Agency of the proposed transfer;
  - (b) the notice may specify the date on which it is proposed that the transfer should take effect;
  - (c) within twenty-one days beginning with the date of receipt of the notice duly given in accordance with sub-paragraph (6A) below, the Agency shall—
    - (i) arrange to amend the consent by substituting the name of the transferee as holder of the consent; and
    - (ii) serve notice on the transferor and the transferee that the amendment has been made; and
  - (d) the transfer shall take effect from the later of—
    - (i) the date on which the Agency amends the consent; and
    - (ii) the date (if any) specified in the joint notice under paragraph (a) above.
- (6A) A joint notice under sub-paragraph (6)(a) above shall include such information as may be prescribed.
- (6B) If the person from whom the consent is to be transferred is a person in whom the consent has vested by virtue of sub-paragraph (2) or (3) above, a joint notice given under sub-paragraph (6)(a) above shall be of no effect unless the notice required by sub-paragraph (7) below has been given.



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- (6C) A notice or other instrument given by or on behalf of the Agency pursuant to sub-paragraph (6) above shall not constitute an instrument signifying the consent of the Agency for the purposes of paragraph 8 above.]
- (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 <sup>F54</sup>... (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

- F49** 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)
- F50** Words in Sch. 10 para. 11(2) repealed (1.10.2004) by **Water Act 2003 (c. 37)**, **ss. 87(2)**, 105(3); S.I. 2004/2528, **art. 2(r)(u)** (with **Sch. paras. 6, 8**)
- F51** Words in Sch. 10 para. 11(3) repealed (1.10.2004) by **Water Act 2003 (c. 37)**, **ss. 87(3)**, 105(3); S.I. 2004/2528, **art. 2(r)(u)** (with **Sch. paras. 6, 8**)
- F52** Sch. 10 para. 11(4) repealed (1.10.2004) by **Water Act 2003 (c. 37)**, **ss. 87(4)**, 105(3), **Sch. 9 Pt. 3**; S.I. 2004/2528, **art. 2(r)(u)** (with **Sch. paras. 6, 8**)
- F53** Sch. 10 para. 11(6)-(6C) substituted for Sch. 10 para. 11(6) (1.10.2004) by **Water Act 2003 (c. 37)**, **ss. 87(5)**, 105(3); S.I. 2004/2528, **art. 2(r)** (with **Sch. paras. 6, 8**)
- F54** Words in Sch. 10 para. 11(9) repealed (1.10.2004) by **Water Act 2003 (c. 37)**, **ss. 87(6)**, 105(3), **Sch. 9 Pt. 3**; S.I. 2004/2528, **art. 2(r)(u)** (with **Sch. paras. 6, 8**)

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

- C4** 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

- M21** 1986 c. 45.

*Status: Point in time view as at 01/06/2009.*

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## SCHEDULE 11

Section 93.

### WATER PROTECTION ZONE ORDERS

#### *Application for consent*

- 1 (1) Where the [<sup>F55</sup>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-
    - (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**

**F55** Word in Sch. 11 para. 1 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**

#### *Supply of copies of draft orders*

- 2 Where the [<sup>F56</sup>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>F56</sup>Agency] may reasonably require, furnish that person with a copy of the draft order submitted to the Secretary of State under paragraph 1 above.

*Status: Point in time view as at 01/06/2009.*

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#### Textual Amendments

**F56** Words in Sch. 11 para. 2 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**

#### *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>F57</sup>Agency] has given and published such additional notices, in such manner, as the Secretary of State may have required.
  - (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

**F57** Word in Sch. 11 para. 3 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**

#### *Consideration of objections etc.*

- 4
- Without prejudice to [<sup>F58</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

**F58** 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**

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## SCHEDULE 12

Section 94.

### NITRATE SENSITIVE AREA ORDERS

#### PART I

#### APPLICATIONS BY THE [F59 AGENCY] FOR DESIGNATIONS ORDERS

##### Textual Amendments

**F59** Word in *Sch. 12 Pt. I* 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**

##### *Orders made only on application*

- 1 (1) Subject to sub-paragraphs (2) and (3) below, the relevant Minister shall not make an order under section 94 of this Act by virtue of which any land is designated as land comprised in a nitrate sensitive area, except with the consent of the Treasury and on an application which—
- (a) has been made by the [F60 Agency] in accordance with paragraph 2 below; and
  - (b) in identifying controlled waters by virtue of sub-paragraph (2)(a) of that paragraph, identified the controlled waters with respect to which that land is so comprised by the order.
- (2) This paragraph shall not apply to an order which reproduces or amends an existing order without adding any land appearing to the relevant Minister to constitute a significant area to the land already comprised in the areas for the time being designated as nitrate sensitive areas.

##### Textual Amendments

**F60** Word in *Sch. 12 para. 1* 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**

##### *Procedure for applications*

- 2 (1) The [F61 Agency] shall not for the purposes of paragraph 1 above apply for the making of any order under section 94 of this Act by which any land would be comprised in the areas for the time being designated as nitrate sensitive areas unless it appears to the [F61 Agency]—
- (a) that pollution is or is likely to be caused by the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use of particular land in England and Wales for agricultural purposes; and
  - (b) that the provisions for the time being in force in relation to those waters and that land are not sufficient, in the opinion of the [F61 Agency], for preventing or controlling such an entry of nitrate into those waters.
- (2) An application under this paragraph shall identify—

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- (a) the controlled waters appearing to the [<sup>F61</sup>Agency] to be the waters which the nitrate is or is likely to enter; and
  - (b) the land appearing to the [<sup>F61</sup>Agency] to be the land the use of which for agricultural purposes, or the doing of anything in connection with whose use for agricultural purposes, is resulting or is likely to result in the entry of nitrate into those waters.
- (3) An application under this paragraph shall be made—
- (a) where the land identified in the application is wholly in Wales, by serving a notice containing the application on the Secretary of State; and
  - (b) in any other case, by serving such a notice on each of the Ministers.

#### Textual Amendments

**F61** Words in [Sch. 12 para. 2](#) 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](#))

## PART II

### ORDERS CONTAINING MANDATORY PROVISIONS

#### *Publication of proposal for order containing mandatory provisions*

- 3 (1) This paragraph applies where the relevant Minister proposes to make an order under section 94 of this Act which—
- (a) makes or modifies any such provision as is authorised by subsection (3)(a) of that section; and
  - (b) in doing so, contains provision which is not of one of the following descriptions, that is to say—
    - (i) provision reproducing existing provisions without modification and in relation to substantially the same area; and
    - (ii) provision modifying any existing provisions so as to make them less onerous.
- (2) The relevant Minister shall, before making any such order as is mentioned in subparagraph (1) above—
- (a) publish a notice with respect to the proposed order, at least once in each of two successive weeks, in one or more newspapers circulating in the locality in relation to which the proposed order will have effect;
  - (b) not later than the date on which that notice is first published, serve a copy of the notice on—
    - (i) the [<sup>F62</sup>Agency].;
    - (ii) every local authority and water undertaker whose area includes the whole or any part of that locality; and
    - (iii) in the case of an order containing any such provision as is authorised by section 94(3)(b) of this Act, such owners and occupiers of agricultural land in that locality as appear to the relevant Minister to be likely to be affected by the obligations in respect of which payments are to be made under that provision;

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- and
- (c) publish a notice in the London Gazette which-
- (i) names every local authority on whom a notice is required to be served under this paragraph;
  - (ii) specifies a place where a copy of the proposed order and of any relevant map or plan may be inspected; and
  - (iii) gives the name of every newspaper in which the notice required by virtue of paragraph (a) above was published and the date of an issue containing the notice.
- (3) The notice required by virtue of sub-paragraph (2)(a) above to be published with respect to any proposed order shall—
- (a) state the general effect of the proposed order;
  - (b) specify a place where a copy of the proposed 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 forty-two 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 or, as the case may be, to one of the Ministers object to the making of the order.

#### Textual Amendments

**F62** Word in [Sch. 12 para. 3](#) 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](#)

#### *Supply of copies of proposed orders*

- 4 The Secretary of State and, in a case where he is proposing to join in making the order, the Minister shall, at the request of any person and on payment by that person of such charge (if any) as the Secretary of State or the Minister may reasonably require, furnish that person with a copy of any proposed order of which notice has been published under paragraph 3 above.

#### *Modifications of proposals*

- 5 (1) Where notices with respect to any proposed order have been published and served in accordance with paragraph 3 above and the period of forty-two days mentioned in sub-paragraph (3)(b) of that paragraph has expired, the relevant Minister may—
- (a) make the order either in the proposed terms or, subject to sub-paragraph (2) below (but without any further compliance with paragraph 3 above), in those terms as modified in such manner as he thinks fit; or
  - (b) decide not to make any order.
- (2) The relevant Minister shall not make such a modification of a proposed order of which notice has been so published and served as he considers is likely adversely to affect any persons unless he has given such notices as he considers appropriate for enabling those persons to object to the modification.
- (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

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in it, the modifications that may be made by the relevant Minister include any modification of any area designated by the proposed order as a nitrate sensitive area.

- (4) For the purposes of this Schedule it shall be immaterial, in a case in which a modification such as is mentioned in sub-paragraph (3) above incorporates land in England in an area which (but for the modification) would have been wholly in Wales, that any requirements of paragraph 3 above in relation to the proposed order have been complied with by the Secretary of State, rather than by the Ministers.

*Consideration of objections etc.*

- 6 Without prejudice to [<sup>F63</sup>section 53 of the 1995 Act (inquiries and other hearings)], where notices with respect to any proposed order have been published and served in accordance with paragraph 3 above, the Secretary of State or, as the case may be, the Ministers may, if he or they consider it appropriate to do so, hold a local inquiry before deciding whether or not to make the proposed order or to make it with modifications.

**Textual Amendments**

**F63** Words in [Sch. 12 para. 6](#) substituted (1.4.1996) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 185](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186, art. 3](#)

*Consent of Treasury for payment provisions*

- 7 The consent of the Treasury shall be required for the making of any order under section 94 of this Act the making of which does not require the consent of the Treasury by virtue of paragraph 1 above but which contains any such provision as is authorised by subsection (3)(b) of that section.

SCHEDULE 13

Section 103.

TRANSITIONAL WATER POLLUTION PROVISIONS

*Transitional power to transfer power of determination  
with respect to water pollution matters to the [<sup>F64</sup>Agency]*

**Textual Amendments**

**F64** Cross-heading to [Sch. 13 para. 1](#) 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](#)

- 1 Where by virtue of the provisions of Schedule 2 to the <sup>M22</sup>Water Consolidation (Consequential Provisions) Act 1991 in relation to anything having effect under paragraph 21 of Schedule 26 to the <sup>M23</sup>Water Act 1989 any matter falls to be determined by the Secretary of State in accordance with any of the provisions of Part III of this Act (other than section 91), that matter shall, if the Secretary of State refers the matter to the [<sup>F65</sup>Agency] for determination, be determined by the [<sup>F65</sup>Agency] instead.

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#### Textual Amendments

**F65** Words in Sch. 13 para. 1 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

**M22** 1991 c. 60.

**M23** 1989 c. 15.

#### *Order under section 32(3) of the 1974 Act*

- 2 (1) Except in so far as the Secretary of State by order otherwise provides, section 85 of this Act shall not apply to any discharges which are of a kind or in any area specified in an order which was made under subsection (3) of section 32 of the <sup>M24</sup>Control of Pollution Act 1974 (preservation of existing exemptions) and is in force for the purposes of paragraph 22(1) of Schedule 26 to the <sup>M25</sup>Water Act 1989 immediately before the coming into force of this Act.
- (2) The Secretary of State may by order require the [<sup>F66</sup>Agency] to publish in a manner specified in the order such information about the operation of any provision made by or under this paragraph as may be so specified.
- (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.

#### Textual Amendments

**F66** Word in Sch. 13 para. 2 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

**M24** 1974 c. 40.

**M25** 1989 c. 15

#### *Pre-1989 transitional provisions*

- 3 (1) A consent which has effect, in accordance with paragraph 24(2) of Schedule 26 to the Water Act 1989 and paragraph 1 of Schedule 2 to the <sup>M26</sup>Water Consolidation (Consequential Provisions) Act 1991, as a consent given for the purposes of Chapter II of Part III of this Act in respect of an application which itself has effect, by virtue of paragraph 21 of that Schedule 26 and that paragraph 1, as an application made under Schedule 10 to this Act shall cease to have effect on the disposal of that application by—
- (a) the giving of an unconditional consent on that application;
  - (b) the expiration, without an appeal under section 91 of this Act being brought, of the period of three months beginning with the date on which notice is served on the applicant that the consent applied for is refused or is given subject to conditions; or
  - (c) the withdrawal or determination of any such appeal.



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- (2) Particulars of consents to which sub-paragraph (1) above applies shall not be required to be contained in any register maintained under section 190 of this Act.

**Marginal Citations**

M26 1991 c. 60.

*Discharge consents on application of undertakers etc.*

- 4 (1) The repeal by the Water Consolidation (Consequential Provisions) Act 1991 of sub-paragraphs (2) and (6) of paragraph 25 of Schedule 26 to the Water Act 1989 shall not affect any provision made under section 113(2) of that Act for the purposes of either of those sub-paragraphs; and, accordingly any such provision shall have effect in accordance with Schedule 2 to that Act of 1991 as if made in exercise of a power conferred by section 99 of this Act.
- (2) If the Secretary of State determines that this sub-paragraph is to apply in relation to any application which is deemed by virtue of paragraph 25(2)(a) of Schedule 26 to the Water Act 1989 and Schedule 2 to the Water Consolidation (Consequential Provisions) Act 1991 to have been made to the [F67 Agency] by the successor company of a water authority—
- (a) that application shall be treated as having been transmitted to the Secretary of State in accordance with a direction under paragraph 4 of Schedule 10 to this Act; but
- (b) the [F67 Agency] shall not be required, by virtue of sub-paragraph (2) of that paragraph 4, to inform that company that the application is to be so treated.
- (3) Where an application is deemed to have been so made by the successor company of a water authority, then, whether or not it is treated under sub-paragraph (2) above as having been transmitted to the Secretary of State, the following provisions shall apply in relation to the application and, except in so far as the Secretary of State otherwise directs, shall so apply instead of paragraphs 1(4) to (6) and 2(1) or, as the case may be, paragraph 4(3) of Schedule 10 to this Act, that is to say—
- (a) the application shall not be considered by the Secretary of State or the [F67 Agency] unless the company has complied with such directions (if any) as may be given by the Secretary of State with respect to the publicity to be given to the application;
- (b) the Secretary of State or, as the case may be, the [F67 Agency] shall be under a duty to consider only such representations and objections with respect to the application as have been made in writing to the Secretary of State or the [F67 Agency] before the end of such period as he may determine and as are not withdrawn; and
- (c) the Secretary of State shall have power to direct the [F67 Agency] (pending compliance with any direction under paragraph (a) above or pending his or, as the case may be, its consideration of the application, representations and objections) to give such a temporary consent under Chapter II of Part III of this Act, or to make such temporary modifications of the conditions of any existing consent, as may be specified in the direction.
- (4) The power of the Secretary of State to make a determination or give a direction under sub-paragraph (2) or (3) above shall be exercisable generally in relation to

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applications of any such description as he may consider appropriate (as well as in relation to a particular application) and, in the case of a direction to give a temporary consent or to make a temporary modification, shall include-

- (a) power to require a temporary consent to be given either unconditionally or subject to such conditions falling within paragraph 2(5) of Schedule 10 to this Act as may be specified in the direction;
  - (b) power, where the direction relates to a description of applications, to require the temporary consent given in pursuance of the direction to be a general consent relating to cases of such a description as may be so specified; and
  - (c) power, where the direction is in respect of an application falling to be considered by the [<sup>F67</sup>Agency], to require the consent or modification to be given or made so as to continue to have effect until the [<sup>F67</sup>Agency's] determination on the application becomes final—
    - (i) on the expiration, without the bringing of an appeal against the determination, of the prescribed period for the bringing of such an appeal; or
    - (ii) on the withdrawal or determination of any such appeal.
- (5) Without prejudice to the provisions of Schedule 2 to the <sup>M27</sup>Water Consolidation (Consequential Provisions) Act 1991, a consent to which sub-paragraph (7) of paragraph 25 of the <sup>M28</sup>Water Act 1989 applies immediately before the coming into force of this Act by virtue of its conditions including a condition that is contravened where there is a failure by more than a specified number of samples to satisfy specified requirements, shall continue to have effect as if the only samples falling to be taken into account for the purposes of that condition were samples taken on behalf of the [<sup>F67</sup>Agency] in exercise, at a time after 31st August 1989, of a power conferred by the Water Act 1989 or a corresponding provision of this Act.
- (6) References in this paragraph to the successor company of a water authority shall be construed in accordance with the Water Act 1989.

#### Textual Amendments

**F67** Words in Sch. 13 para. 4 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

**M27** 1991 c. 60.

**M28** 1989 c. 15.

## SCHEDULE 14

Section 108.

### ORDERS TRANSFERRING MAIN RIVER FUNCTIONS TO THE AUTHORITY

#### *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 [<sup>F68</sup>Agency] shall—

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- (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

**F68** Word in Sch. 14 para. 1 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**

#### *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 [<sup>F69</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;
  - (b) the [<sup>F70</sup>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

**F69** 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**

**F70** Word in Sch. 14 para. 2 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**

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*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 House of Lords from a decision of the Court of Appeal in proceedings under this paragraph.
- (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.

*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.

*Status: Point in time view as at 01/06/2009.*

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## 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>F71</sup>Agency] in writing under the common seal of the [<sup>F71</sup>Agency]; and
  - (b) shall be deemed to be raised on the date on which a resolution is passed by the [<sup>F71</sup>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**

**F71** Words in Sch. 15 para. 1 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**

*Publication of drainage charge*

- 2 (1) A drainage charge shall not be valid unless notice of the charge is given by the [<sup>F72</sup>Agency] in accordance with sub-paragraph (2) below within ten days of the date on which it is raised.
- (2) The notice must—
- (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**

**F72** Word in Sch. 15 para. 2 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**

*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 the local flood defence district 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.

*Status: Point in time view as at 01/06/2009.*

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- (3) The full amount of a drainage charge may be recovered by the [<sup>F73</sup>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

**F73** Word in Sch. 15 para. 3 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**

#### *Cases where identity of occupiers in doubt*

- 4 (1) The [<sup>F74</sup>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;
  - (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>F75</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>F74</sup>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

**F74** Words in Sch. 15 para. 4 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**

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**F75** 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>F76</sup>Agency] may make arrangements with the owner of any chargeable land for any drainage charges which may be raised by the [<sup>F76</sup>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>F76</sup>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>F76</sup>Agency] shall make to him an allowance equal to ten per cent. of the full amount of the charges.
- (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>F76</sup>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**

**F76** Words in Sch. 15 para. 5 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**

*Power of occupier to prevent arrangements under paragraph 5*

- 6 (1) The occupier of any chargeable land may, by notice given to the [<sup>F77</sup>Agency], determine—
- (a) that no arrangements under paragraph 5 above shall be made in respect of the land; and

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- (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 [F77Agency].
- (3) Where notice is given to the [F77Agency] under sub-paragraph (1) above, it shall be the duty of the [F77Agency] to send a copy of the notice to the owner of the land to which it relates.

#### Textual Amendments

**F77** Words in Sch. 15 para. 6 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**

#### *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 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 [F78Agency] 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 [F78Agency] 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 [F78Agency] to determine—
- (a) how much (if any) of the land occupied by that person is chargeable land; and



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- (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 [<sup>F79</sup>to 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

- F78** Words in Sch. 15 para. 9 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**
- F79** 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**

#### *Power to correct erroneous assessments etc.*

- 10 (1) The [<sup>F80</sup>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>F80</sup>Agency] necessary in order to make the raising, levying and collection of the charge conform with this Act.
- (2) In particular, the [<sup>F80</sup>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>F80</sup>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>F80</sup>Agency] shall serve a notice of any amendment made by the [<sup>F80</sup>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

- F80** Words in Sch. 15 para. 10 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**

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*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 for the area in which the land or any part of it is situated.
- (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>F81</sup>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.

**Textual Amendments**

**F81** Words in Sch. 15 para. 11 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**

*Recovery of drainage charges*

- 12 (1) Arrears of any drainage charge may be recovered by the [<sup>F82</sup>Agency] in the same manner in which arrears of a non-domestic rate may be recovered under the <sup>M29</sup>Local Government Finance Act 1988 by a [<sup>F83</sup>billing authority] within the meaning of that Act.
- (2) Without prejudice to its powers by virtue of [<sup>F84</sup>section 37 of, and paragraph 6 of Schedule 1 to, the 1995 Act], the [<sup>F82</sup>Agency] may by resolution authorise any member or officer of the [<sup>F82</sup>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>F82</sup>Agency's] behalf in any proceedings before a magistrates' court for the issue of a warrant of distress 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>F82</sup>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.

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### Textual Amendments

- F82** Words in Sch. 15 para. 12 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**
- F83** 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)**)
- F84** 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**

### Marginal Citations

- M29** 1988 c. 41.

### *Use of certain authorities as agents for assessment, collection etc. of drainage charges*

- 13 (1) The [<sup>F85</sup>Agency] and any relevant authority may enter into agreements for—
- (a) the doing by the relevant authority, as agents of the [<sup>F85</sup>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 [<sup>F85</sup>Agency] to the relevant authority of payments in respect of anything so done.
- (2) The [<sup>F85</sup>Agency] may make arrangements with either of the Ministers for the exercise by him on behalf of the [<sup>F85</sup>Agency], in such cases as may be determined in pursuance of the arrangements, of the powers conferred on the [<sup>F85</sup>Agency] by paragraph 9 above.
- (3) Any arrangements under sub-paragraph (2) above shall contain provision for the reimbursement by the [<sup>F85</sup>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 [<sup>F86</sup>or 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 [<sup>F86</sup>or 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

- F85** Words in Sch. 15 para. 13 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**
- F86** 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**

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## 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 [F87 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 [F87 Agency] shall—
- (a) send copies of the scheme to—
    - (i) the council of any county, [F88 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 [F87 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 [F87 Agency] submit a special charges scheme which designates any watercourse wholly or partly within an internal drainage district, then (unless the [F87 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**

**F87** Words in Sch. 16 para. 1 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**

**F88** 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**

*Status: Point in time view as at 01/06/2009.*

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### *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 [F89 Agency] in addition to the special drainage charge authorised by the scheme.
- (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**

**F89** Word in Sch. 16 para. 2 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**

### *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 [F90, 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 [F91 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**

**F90** 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**

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**F91** Word in Sch. 16 para. 3 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**

*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.
- (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.

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*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
  - (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 House of Lords 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>M30</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.

**Marginal Citations**

**M30** 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.

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### *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.
- (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>M31</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**

**M31** 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—



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- (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.
- (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—

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“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 affecting that other land by the exercise of the powers conferred by this or the special Act.”

*Section 8 of the 1965 Act*

4 For subsection (1) of section 8 of the 1965 Act (protection for vendor against severance of house, garden, etc.) there shall be substituted the following subsections—

“(1) No person shall be required to grant any right over part only—

- (a) of any house, building or manufactory; or
- (b) of a park or garden belonging to a house,

if he is willing to sell the whole of the house, building, manufactory, park or garden, unless the [<sup>F92</sup>Upper Tribunal determines] that—

- (i) in the case of a house, building or manufactory, the part over which the right is proposed to be acquired can be made subject to that right without material detriment to the house, building or manufactory; or
- (ii) in the case of a park or garden, the part over which the right is proposed to be acquired can be made subject to that right without seriously affecting the amenity or convenience of the house;

and, if the [<sup>F93</sup>Upper Tribunal so determines], the Tribunal shall award compensation in respect of any loss due to the acquisition of the right, in addition to its value; and thereupon the party interested shall be required to grant to the acquiring authority that right over the part of the house, building, manufactory, park or garden.

(1A) In considering the extent of any material detriment to a house, building or manufactory, or any extent to which the amenity or convenience of a house is affected, the [<sup>F94</sup>Upper Tribunal] shall have regard not only to the right which is to be acquired over the land, but also to any adjoining or adjacent land belonging to the same owner and subject to compulsory purchase.”

**Textual Amendments**

- F92** Words in Sch. 18 para. 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. 232(a)(i)** (with Sch. 5)
- F93** Words in Sch. 18 para. 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. 232(a)(ii)** (with Sch. 5)
- F94** Words in Sch. 18 para. 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. 232(b)** (with Sch. 5)

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*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
  - (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.

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

- C5** 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)

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- C6** 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. I**; [S.I. 2006/1172, art. 2\(a\)-\(d\)](#) (with art. 3); [S.I. 2006/1279, art. 2\(a\)-\(d\)](#) (with art. 3)

### *Applications for orders*

- 1 (1) Where the [<sup>F95</sup>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>F96</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>F96</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>F95</sup>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>F95</sup>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

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- 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.
- (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>F97</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>F98</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>F95</sup>Agency] requiring it to notify him of applications for compulsory works orders and has paid such reasonable charge as the [<sup>F95</sup>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>F95</sup>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

- F95** Words in Sch. 19 para. 1 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**
- F96** 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)
- F97** 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**

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**F98** 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))

### *Supply of copies of draft orders*

- 2 Where the [<sup>F99</sup>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>F99</sup>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**

**F99** Words in Sch. 19 para. 2 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**

### *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>F100</sup>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>F100</sup>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**

**F100** Words in Sch. 19 para. 3 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**

### *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

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- (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, 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>F101</sup>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 sub-paragraph.
- (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

**F101** Word in Sch. 19 para. 4 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**

#### *Notice after making of order*

- 5 (1) As soon as practicable after a compulsory works order has been made, the [<sup>F102</sup>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>F102</sup>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 or [<sup>F103</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 or [<sup>F103</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 [F102 Agency] shall, at the request of any person and on payment by that person of such charge (if any) as the [F102 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 [F102 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**

- F102** Words in Sch. 19 para. 5 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**
- F103** 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>M32</sup>Compulsory Purchase Act 1965;
  - (b) section 4 and Part III of, and Schedule 3 to, the <sup>M33</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 6 of the <sup>M34</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>M35</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.

#### Marginal Citations

**M32** 1965 c. 56.

**M33** 1981 c. 67.

**M34** 1945 c. 18 (9 & 10 Geo. 6).

**M35** 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>F104</sup>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

**F104** Word in Sch. 19 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**

#### *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

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- (b) grants authority for the carrying out of the operations,  
the person entitled to that interest shall be entitled to compensation from the [F105Agency] 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 [F105Agency] 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 [F105Agency] 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 [F105Agency] in pursuance of a compulsory works order shall be entitled to recover compensation from the [F105Agency] 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 [F105Agency]) 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 [F106Upper Tribunal]; and in relation to the determination of any such compensation the provisions of [F107section] 4 of the M36Land 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

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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**

- F105** Words in Sch. 19 para. 8 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**
- F106** 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)
- F107** 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**

- M36** 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.

### *Interpretation*

- 10 In this Schedule—  
“bridleway” and “footpath” have the same meanings as in the <sup>M37</sup>Highways Act 1980;

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“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>F108</sup>“restricted byway” has the same meaning as in Part 2 of the Countryside and Rights of Way Act 2000;]

F109 .....

#### Textual Amendments

**F108** 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)

**F109** 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

**M37** 1980 c. 66.

## SCHEDULE 20

Section 173.207.

### SUPPLEMENTAL PROVISIONS WITH RESPECT TO POWERS OF ENTRY

#### *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
  - (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>M38</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.

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- (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>M39</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**

**M38** 1991 c. 22.

**M39** 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;
  - (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.

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*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
  - (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>F110</sup>Upper Tribunal] where the relevant authority is one of the Ministers; and
  - (b) by one of the Ministers, where the [<sup>F111</sup>Agency] is the relevant authority.

**Textual Amendments**

**F110** 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)

**F111** Word in Sch. 20 para. 6 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**

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### *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>F112</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**

**F112** 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 or the <sup>F113</sup>Agency], 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>M40</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 (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**

**F113** Word the definition of “relevant authority” in Sch. 20 para. 8 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**

**M40** 1991 c. 56.



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## 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 [F114Agency], 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 [F114Agency]—
- (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 M41New Roads and Street Works Act 1991, a payment of compensation under this paragraph shall be treated for the purposes of section 32 of the M42Public 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**

**F114** Words in Sch. 21 para. 1 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**

**M41** 1991 c. 22.

**M42** 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 [F115Agency] 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 [F115Agency] 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 [F115Agency] 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

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- (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 [F115Agency] 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 [F115Agency], of any power to carry out pipe-laying works on private land, the [F115Agency] 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 [F115Agency], 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

**F115** Words in Sch. 21 para. 2 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**

#### *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 [F116Upper Tribunal]; and in relation to the determination of any such compensation the provisions of [F117section] 4 of the <sup>M43</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;

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- (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

**F116** 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)

**F117** 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

**M43** 1961 c. 33.

#### *Compensation in respect of discharges for works purposes*

- 4 (1) It shall be the duty of the [<sup>F118</sup>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.
- (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>F118</sup>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.

*Status: Point in time view as at 01/06/2009.*

*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

**F118** Words in Sch. 21 para. 4 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**

### *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 [F119 Agency] of any powers under section 165(1) to (3) of this Act, the [F119 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 [F120 Upper Tribunal].
- (3) Where injury is sustained by any person by reason of the exercise by the [F119 Agency] of its powers under subsection (1)(b) of section 167 of this Act—
- (a) the [F119 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 [F119 Agency] of its powers under section 165(1) to (3) of this Act.

### Textual Amendments

**F119** Words in Sch. 21 para. 5 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**

**F120** 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)

**C7** Sch. 21 para. 5(1)(2) applied (16.3.1992) by *Avon Weir Act 1992* (c. v), **s. 7(5)** (with s. 61)

## SCHEDULE 22

Section 178.

### PROTECTION FOR PARTICULAR UNDERTAKINGS

### Modifications etc. (not altering text)

**C8** 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 [F121 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—

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- (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>F122</sup>the Coal Authority] and [<sup>F123</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>F124</sup>(c) any undertaking consisting in the provision of an electronic communications network;]
  - (d) any airport to which Part V of the <sup>M44</sup>Airports Act 1986 applies;
  - (e) the undertaking of any public gas supplier within the meaning of Part I of the <sup>M45</sup>Gas Act 1986;
  - (f) the undertaking of any person authorised by a licence under Part I of the <sup>M46</sup>Electricity Act 1989 to generate, [<sup>F125</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>F126</sup>(j) the undertaking of any licensed operator, within the meaning of the Coal Industry Act 1994;]
  - [<sup>F127</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.]
- [<sup>F128</sup>(4A) In sub-paragraph (4)(a) above “universal service provider” has the same meaning as in the Postal Services Act 2000; and the reference to the provision of a universal postal service shall be construed in accordance with that Act.]
- (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.

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- (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

- F121** Words in Sch. 22 para. 1 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**
- F122** 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**
- F123** 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)**
- F124** 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)
- F125** 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
- F126** 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**
- F127** 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**
- F128** Sch. 22 para. 1(4A) inserted (26.3.2001) by S.I. 2001/1149, **art. 3(1)**, **Sch. 1 para. 89(3)**

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

- C9** 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

- M44** 1986 c. 31.  
**M45** 1986 c. 44.  
**M46** 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>F129</sup>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.

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- (4) This paragraph shall be without prejudice to any power under this Act to transfer the functions of any authority.

#### Textual Amendments

**F129** Word in Sch. 22 para. 2 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**

#### *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>M47</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>M48</sup>New Roads and Street Works Act 1991.
- (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>F130</sup>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>M49</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.

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- (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>M50</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**

**F130** Word in Sch. 22 para. 3 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**

**M47** 1980 c. 66.  
**M48** 1991 c. 22.  
**M49** 1870 c. 78.  
**M50** 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
  - (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.

*Protection for telecommunication systems*

- 5 Paragraph 23 of Schedule 2 to the <sup>M51</sup>Telecommunications Act 1984 (which provides a procedure for certain cases where works involve the alteration of [<sup>F131</sup>electronic communications apparatus] ) shall apply to the [<sup>F132</sup>Agency] for the purposes of any works carried out by the [<sup>F132</sup>Agency] in exercise of any of the powers conferred by any enactment (including [<sup>F133</sup>section 37 of the 1995 Act]).



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#### Textual Amendments

- F131** 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](#))
- F132** Word in Sch. 22 para. 5 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](#)
- F133** 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](#)

#### Marginal Citations

- M51** [1984 c. 12.](#)

#### *Interpretation*

- 6 In this Schedule “railway company” means the British Railways Board, [<sup>F134</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

- F134** 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>F135</sup>Agency] acquires any land (whether compulsorily in exercise of any power conferred by or under this Act or otherwise); and
  - (b) where the [<sup>F135</sup>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>F135</sup>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>F135</sup>Agency] unless express provision to the contrary is contained—
- (a) where the land vests in the [<sup>F135</sup>Agency] by virtue of a conveyance, in the conveyance; or

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- (b) where the land is acquired by the [F135Agency] in pursuance of any power of compulsory acquisition conferred by or under this Act, in the order authorising the acquisition.
- (3) The [F135Agency] 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

**F135** Words in Sch. 23 para. 1 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**

#### *Notice required for the working of underlying mines*

- 2 (1) If the owner of any mines or minerals underlying any part of the [F136Agency'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 [F136Agency].
- (2) On receipt of a notice under sub-paragraph (1) above the [F136Agency] 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 [F136Agency]—
- considers that the working of the underlying mines or minerals is likely to damage any part of its undertaking;
  - is willing to compensate the owner of the mines or minerals for the restriction imposed by virtue of this sub-paragraph; and
  - 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 [F136Agency], and the [F136Agency] 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 [F137Upper 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 [F136Agency], 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 [F136Agency] is caused by the working otherwise than as authorised by this paragraph of any mines or minerals underlying any part of its undertaking—
- the owner of the mines or minerals shall, at his own expense, forthwith repair the damage; and
  - the [F136Agency] 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.

*Status: Point in time view as at 01/06/2009.*

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#### Textual Amendments

- F136** Words in Sch. 23 para. 2 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**
- F137** 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 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>F138</sup>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>F138</sup>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>F138</sup>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

- F138** Words in Sch. 23 para. 3 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**

#### *Compensation relating to severance*

- 4 (1) Where mines or minerals underlying any part of the [<sup>F139</sup>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>F139</sup>Agency] shall from time to time pay to

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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,

and shall pay for any minerals not purchased by the [<sup>F139</sup>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>F139</sup>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>F139</sup>Agency] and the owner of the mines or minerals or, in default of agreement, by the Secretary of State.

#### Textual Amendments

**F139** Words in Sch. 23 para. 4 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**

#### *Powers of entry*

- 5 (1) Any person designated in writing for the purpose by the [<sup>F140</sup>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>F140</sup>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>F140</sup>Agency]; and
  - (c) carrying out any works and taking any other steps which the [<sup>F140</sup>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>F140</sup>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.

*Status: Point in time view as at 01/06/2009.*

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#### Textual Amendments

**F140** Words in Sch. 23 para. 5 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**

#### *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 [<sup>F141</sup>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

**F141** Word in Sch. 23 para 6 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**

#### *Interpretation*

- 7 (1) In this Schedule—
- “conveyance” has the same meaning as in the <sup>M52</sup>Law of Property Act 1925;
  - “designated distance”, in relation to any part of the [<sup>F142</sup>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 [<sup>F142</sup>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 [<sup>F142</sup>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 [<sup>F142</sup>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
  - (b) any pipes or other underground works particulars of which fall or would fall to be incorporated in any records kept under section 195 of this Act.
- (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 [<sup>F142</sup>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 [<sup>F142</sup>Agency] in accordance with a scheme under Schedule 2 to the <sup>M53</sup>Water Act 1989 or otherwise.

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- (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 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>F142</sup>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>F142</sup>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**

**F142** Words in Sch. 23 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**

**Marginal Citations**

**M52** 1925 c. 20.

**M53** 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.

[<sup>F143</sup>The Office of Fair Trading.]

**Textual Amendments**

**F143** Words in Sch. 24 Pt. I substituted (1.4.2003) by **Enterprise Act 2002 (c. 40)**, s. 279, **Sch. 25 para. 26(2)(a)**; 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>F144</sup>The Competition Commission].

*Status: Point in time view as at 01/06/2009.*

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#### Textual Amendments

**F144** Words in Sch. 24 Pt. 1 substituted (1.4.1999) by S.I. 1999/506, **art. 31(b)** (with **art. 3**)

[<sup>F145</sup>The Office of Communications]

#### Textual Amendments

**F145** 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>F146</sup>The Coal Authority.]

#### Textual Amendments

**F146** 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>F147</sup>Office of Rail Regulation]

#### Textual Amendments

**F147** Words in Sch. 24 substituted (5.7.2004) by **Railways and Transport Safety Act 2003 (c. 20), Sch. 2 para. 19(m)**; S.I. 2004/827, **art. 4(g)**

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)

**C10** 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>M54</sup>Trade Descriptions Act 1968.

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**Marginal Citations**

**M54** 1968 c. 29.

The <sup>M55</sup>Fair Trading Act 1973.

**Marginal Citations**

**M55** 1973 c. 41.

The <sup>M56</sup>Consumer Credit Act 1974.

**Marginal Citations**

**M56** 1974 c. 39.

**F148**

**Textual Amendments**

**F148** 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.**

**F148**

The <sup>M57</sup>Estate Agents Act 1979.

**Marginal Citations**

**M57** 1979 c. 38.

The <sup>M58</sup>Competition Act 1980.

**Marginal Citations**

**M58** 1980 c. 21.

The <sup>M59</sup>Telecommunications Act 1984.

**Marginal Citations**

**M59** 1984 c. 12.

The <sup>M60</sup>Airports Act 1986.



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**Marginal Citations**

**M60** 1986 c. 31.

The <sup>M61</sup>Gas Act 1986.

**Marginal Citations**

**M61** 1986 c. 44.

The <sup>M62</sup>Consumer Protection Act 1987.

**Marginal Citations**

**M62** 1987 c. 43.

The <sup>M63</sup>Electricity Act 1989.

**Marginal Citations**

**M63** 1989 c. 29.

[<sup>F149</sup>The Railways Act 1993]

**Textual Amendments**

**F149** 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>F150</sup>The Coal Industry Act 1994.]

**Textual Amendments**

**F150** 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>F151</sup>The Competition Act 1998.]

**Textual Amendments**

**F151** 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>F152</sup>Part I of the Transport Act 2000.]

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#### Textual Amendments

**F152** Entry in Sch. 24 Pt. II inserted (21.12.2001) by [S.I. 2001/4050](#), art. 2, **Sch. Pt. IV para. 22**

[<sup>F153</sup>The Enterprise Act 2002.]

#### Textual Amendments

**F153** 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>F154</sup>The Communications Act 2003.]

#### Textual Amendments

**F154** 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>F155</sup>The Railways Act 2005.]

#### Textual Amendments

**F155** 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**

<sup>F156</sup> .....

#### Textual Amendments

**F156** 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>F157</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

**F157** 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))

*Status: Point in time view as at 01/06/2009.*

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## SCHEDULE 25

Section 210.

### BYELAW - MAKING POWERS OF THE AUTHORITY

#### *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>F158</sup>Agency] to be necessary or expedient to do so for the purposes of any of the functions specified in [<sup>F159</sup>sub-paragraphs (i), (iii) and (v) of section 2(1)(a) of the 1995 Act], the [<sup>F158</sup>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>F158</sup>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>F158</sup>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>F158</sup>Agency] in such manner as the byelaws may provide; and
  - (b) authorise the [<sup>F158</sup>Agency] to make reasonable charges in respect of the registration of boats in pursuance of the byelaws.

#### **Textual Amendments**

**F158** Words in Sch 25 para. 1 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**

**F159** 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)**

**C11** 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>F160</sup>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.

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- (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>F160</sup>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>F160</sup>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.
- (5) In this paragraph “boat” includes a vessel of any description, and “boating” shall be construed accordingly.

#### Textual Amendments

**F160** Words in Sch. 25 para. 2 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**

*Byelaws for regulating the use of the [<sup>F161</sup>Agency's] waterways etc.*

#### Textual Amendments

**F161** Word in the cross-heading to Sch. 25 para. 3 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**

- 3 (1) The [<sup>F162</sup>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 [<sup>F162</sup>Agency] and with respect to any land held or managed with the waterway.

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- (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 [F162 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 [F162 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 M64 Countryside Act 1949.

**Textual Amendments**

**F162** Words in Sch. 25 para. 3 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**

**M64** 1949 c. 97.

*Byelaws for controlling certain forms of pollution*

- 4 (1) The [F163 Agency] may by byelaws make such provision as the [F163 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—

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- (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

**F163** Words in Sch. 25 para. 4 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**

#### *Byelaws for flood defence and drainage purposes*

- 5 (1) The [<sup>F164</sup>Agency] may make such byelaws in relation to any particular locality or localities as it considers [<sup>F165</sup>necessary—
- (a) for securing the efficient working of any drainage system, or
  - (b) for regulating the effects of any drainage system on the environment.]
- (2) Without prejudice to the generality of sub-paragraph (1) above and subject to sub-paragraph (3) below, the [<sup>F164</sup>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>F164</sup>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;
  - (c) preventing the obstruction of any watercourse vested in the [<sup>F164</sup>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 [<sup>F164</sup>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.
- (4) Notwithstanding anything in this Act, no byelaw made by the [<sup>F164</sup>Agency] under this paragraph shall conflict with or interfere with the operation of any byelaw made by a navigation authority, harbour authority or conservancy authority.
- (5) In this paragraph “banks” [<sup>F166</sup>], “drainage”] and “watercourse” have the same meanings as in Part IV of this Act.

#### Textual Amendments

**F164** Words in Sch. 25 para. 5 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**

**F165** Words in Sch. 25 para. 5(1) substituted (30.3.2006) by **Natural Environment and Rural Communities Act 2006 (c. 16), ss. 100(1), 107(7)** (see also S.I. 2006/2541, art. 2)

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**F166** 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 [F167Agency] shall have power, [F168; 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 M65Salmon and Freshwater Fisheries Act 1975; and
  - (b) the better protection, preservation and improvement of any salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries.
- (2) Subject to paragraph 7(1) below, the [F167Agency] shall have power, [F168; 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, whether alive or dead;
  - (b) prohibiting or regulating—
    - (i) the taking of trout or any freshwater fish of a size less than such as may be prescribed by the byelaw; or
    - (ii) the taking of fish 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 salmon, trout, or freshwater fish of any instrument (not being a fixed engine) in such waters and at such times as may be prescribed by the byelaws;
  - (d) specifying the nets and other instruments (not being fixed engines) which may be used for taking salmon, trout, freshwater fish and eels, 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;
  - (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;
  - (g) requiring and regulating the attachment to licensed 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 salmon or trout of any net which is not licensed, 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 the annual close season for salmon of a net capable of taking salmon, 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.
- (3) Subject to the provisions of Schedule 1 to the Salmon and Freshwater Fisheries Act 1975 (duty to make byelaws about close season), the [F167Agency] shall have

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- power, [<sup>F168</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) fixing or altering any such close season or close time as is mentioned in paragraph 3 of that Schedule;
  - (b) dispensing with a close season for freshwater fish or rainbow trout;
  - (c) determining for the purposes of the Salmon and Freshwater Fisheries Act 1975 the period of the year during which [<sup>F169</sup>screens] need not be maintained;
  - (d) prohibiting or regulating fishing with rod and line between the end of the first hour after sunset on any day and the beginning of the last hour before sunrise on the following morning;
  - (e) determining the time during which it shall be lawful to use a gaff in connection with fishing with rod and line for salmon or migratory trout;
  - (f) authorising fishing with rod and line for eels during the annual close season for freshwater fish.
- (4) Subject to paragraph 7(2) below, the [<sup>F167</sup>Agency] shall have power, [<sup>F168</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 regulating the deposit or discharge in any waters containing fish of any liquid or solid matter specified in the byelaw which is detrimental to salmon, trout or freshwater fish, or the spawn or food of fish.
- (5) The [<sup>F167</sup>Agency] shall have power, [<sup>F168</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>F167</sup>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 salmon, trout, freshwater fish or eels,
  - (b) of whether they have taken any; and
  - (c) if they have, of what they have taken.
- (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>M66</sup>Salmon and Freshwater Fisheries Act 1975 have the same meanings in this paragraph as in that Act.

#### Textual Amendments

- F167** Words in Sch. 25 para. 6 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**
- F168** 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**
- F169** Word in Sch. 25 para. 6(3)(c) substituted (1.1.1999) by 1995 c. 25, s. 105, **Sch. 15, para. 26(2)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 4**

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

- C12** Sch. 25 para. 6 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I 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**))



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#### Marginal Citations

**M65** 1975 c. 51.

**M66** 1975 c. 51.

*[<sup>F170</sup> Fisheries byelaws for marine or aquatic environmental purposes]*

#### Textual Amendments

**F170** 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>F171</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

**F171** 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*

7 (1) The [<sup>F172</sup>Agency] shall not make any byelaws by virtue of paragraph 6(2)(e) above in relation to any place within the sea fisheries district of a local fisheries committee except with the consent of that committee.

(2) The [<sup>F172</sup>Agency] shall not make byelaws by virtue of paragraph 6(4) above so as to prejudice any powers of a sewerage undertaker to discharge sewage in pursuance of any power given by a public general Act, a local Act or a provisional order confirmed by Parliament.

#### Textual Amendments

**F172** Words in Sch. 25 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

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## SCHEDULE 26

Section 210.

### PROCEDURE RELATING TO BYELAWS MADE BY THE [F173 AGENCY]

#### Textual Amendments

**F173** Word in the heading to Sch. 26 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**

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

**C13** 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**))

**C14** 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 [F174 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 [F174 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 [F174 Agency] for the confirmation of any byelaw, a copy of it shall be deposited at one or more of the offices of the [F174 Agency], including (if there is one) at an office in the area to which the byelaw would apply.
- (4) The [F174 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 [F174 Agency], to be furnished free of charge with a printed copy of a byelaw so deposited.

#### Textual Amendments

**F174** Words in Sch. 26 para. 1 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**

#### *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 [F175 Agency] for confirmation under this Schedule, or may confirm the byelaw either without or, if the [F175 Agency] consents, with modifications.

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- (2) The [F175 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 [F175 Agency] under paragraph 4 of Schedule 25 to this Act shall be confirmed without a local inquiry only if—
- no written objection to its confirmation has been received by the relevant Minister;
  - every objection to its confirmation which has been so received has been withdrawn; or
  - 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 [F175 Agency] consents” of the words “ after consultation with the [F175 Agency] ” .

#### Textual Amendments

**F175** Words in Sch. 26 para. 2 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**

#### *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 [F176 Agency] and confirmed under this Schedule shall be printed and deposited at one or more of the offices of the [F176 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 [F176 Agency] and on payment of such reasonable sum as the [F176 Agency] may determine, to be furnished with a copy of any byelaw so deposited by the [F176 Agency].

#### Textual Amendments

**F176** Words in Sch. 26 para. 4 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**

#### *Revocation of byelaws*

- 5 If it appears to the relevant Minister that the revocation of a byelaw is necessary or expedient, he may—

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- (a) after giving notice to the <sup>F177</sup>Agency] and considering any representations or objections made by the <sup>F177</sup>Agency]; and
- (b) if required by the <sup>F177</sup>Agency], after holding a local inquiry, revoke that byelaw.

#### Textual Amendments

**F177** Words in Sch. 26 para. 5 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**

#### *Proof of byelaws*

- 6 The production of a printed copy of a byelaw purporting to be made by the <sup>F178</sup>Agency] upon which is indorsed a certificate, purporting to be signed on its behalf, stating—
- (a) that the byelaw was made by the <sup>F178</sup>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

**F178** Words in Sch. 26 para. 6 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**

#### *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>M67</sup>Water Act 1989 as read with the savings in paragraphs 1 and 5 of Schedule 2 to the <sup>M68</sup>Water Consolidation (Consequential Provisions) Act 1991 (transfer of land drainage functions under local statutory provisions); and
    - (ii) have effect in the area of a regional flood defence committee the whole or the greater part of whose area is 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>F179</sup>Agency]), means the Secretary of State or the Minister; and
  - (c) in relation to any other byelaws, means the Secretary of State.

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#### Textual Amendments

**F179** 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**

#### Marginal Citations

**M67** 1989 c. 15.

**M68** 1991 c. 60.

### 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)
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)

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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.
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).

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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.
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.

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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).
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.



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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.
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.

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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).
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).

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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.
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).

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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.
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.

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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).
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.

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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.
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

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	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.
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)

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	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) 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).



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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 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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