

SCHEDULES

SCHEDULE 2

Section 2.

TRANSITIONAL AND TRANSITORY PROVISIONS AND SAVINGS

PART I

GENERAL TRANSITIONAL PROVISIONS AND SAVINGS

Principal transitional provision

- 1 (1) Subject to Part II of this Schedule, any subordinate legislation, application or appointment made, consent or approval given, licence or certificate issued or other thing done under or for the purposes of any enactment repealed by this Act, and anything which has effect as something so made, given, issued or done, shall have effect, so far as necessary for the purposes specified in sub-paragraph (2) below, as made, given, issued or done under the corresponding provision of the consolidation Acts.
- (2) The purposes mentioned in sub-paragraph (1) above are—
- (a) the purpose of preserving and continuing the validity and effect after commencement of anything which has been made, given, issued or otherwise done under or for the purposes of any enactment repealed by this Act, and of anything so far as it is treated as a thing so made, given, issued or done; and
 - (b) the purpose of including references to things which have been so made, given, issued or done before commencement, or which are treated as if they were, in references in the consolidation Acts, in any other enactment and in any subordinate legislation or document to things made, given, issued or otherwise done under or for the purposes of any provision of the consolidation Acts.
- (3) Subject to sub-paragraphs (1) and (2) above, a reference in any Act or in any subordinate legislation or document to any enactment repealed by this Act shall have effect after commencement as a reference to the corresponding enactment contained in the consolidation Acts.
- (4) Without prejudice to the preceding provisions of this paragraph, where—
- (a) by virtue of any enactment repealed by this Act, any subordinate legislation, consent, licence, document or other thing has effect immediately before commencement subject to modifications specified or described in that enactment; and
 - (b) with those modifications that subordinate legislation, consent, licence, document or other thing would continue, in accordance with sub-paragraphs (1) and (2) above, to have effect after commencement as something made, given, issued or done under or for the purposes of any provision of the consolidation Acts,

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then, notwithstanding the repeal, the modifications shall continue to have effect, and those sub-paragraphs shall have effect in relation to that subordinate legislation, consent, licence, document or other thing accordingly.

- (5) Without prejudice to the preceding provisions of this paragraph, anything which immediately before commencement is treated for the purposes of an enactment repealed by this Act as done by or in relation to a particular person shall continue to be treated as done by or in relation to that person for the purposes of the corresponding provisions of the consolidation Acts, and sub-paragraphs (1) and (2) above shall have effect accordingly.
- (6) The repeal by this Act of any provision which authorised any instrument under an enactment repealed by this Act to be made without—
- (a) such consultation; or
 - (b) such compliance with any other requirements,
- as would be required in respect of an instrument under the corresponding provision of the consolidation Acts shall not prevent any instrument which in pursuance of that provision has been so made from having effect, in accordance with sub-paragraphs (1) and (2) above, as if made under that corresponding provision.
- (7) Where—
- (a) any period of time is specified in any enactment repealed by this Act to which a provision of the consolidation Acts corresponds; and
 - (b) that period is current for the purposes of that enactment at commencement,
- so much of the period as has expired before commencement shall be taken into account, in relation to anything which is treated by virtue of this Schedule as done under that provision, as if that provision had been in force when the period began to run.
- (8) References in this paragraph to an enactment repealed by this Act include references to any provision of subordinate legislation which is revoked by this Act.

*Savings for powers to make, amend or challenge
subordinate legislation and for certain specific instruments*

- 2 (1) Without prejudice to the provisions of paragraph 1 above—
- (a) the powers to make subordinate legislation under the Local Government Finance Act 1988 and section 149 of the Local Government and Housing Act 1989 (power to make provision in connection with the arrangements for financing local government); and
 - (b) any other powers to make subordinate legislation modifying any provision reproduced in the consolidation Acts, including the power to amend or revoke any subordinate legislation reproduced in those Acts,
- shall be exercisable in relation to the provisions of those Acts to the like extent as they were exercisable in relation to the enactment or subordinate legislation to which those provisions correspond.
- (2) Where provision contained in any subordinate legislation is reproduced in any enactment contained in sections 134 to 136 of the Water Resources Act 1991, Chapter I or II of Part IV of, or Part II of Schedule 1 to, the Land Drainage Act 1991 or Part II of this Schedule, that enactment shall not have any greater effect by virtue of being

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contained in an enactment than it would have had if it had continued to be contained in the subordinate legislation in question.

- (3) The repeal by this Act of paragraph 23 of Schedule 13 to the 1989 Act shall not affect the operation in relation to the NRA, in accordance with sub-paragraph (3) of that paragraph, of any provision of an order under section 82 of the Water Resources Act 1963 which was made before 1st September 1989.
- (4) The repeal by this Act of section 106 of the Water Resources Act 1963 shall not affect the powers conferred by that section in relation to the provisions of section 5 or Part IX of that Act or in relation to any order under section 10 of that Act.
- (5) The repeal by this Act of sections 45 to 47, 89 and 110 of the 1976 Act shall not affect the operation of those sections so far as—
 - (a) they have effect by virtue of any subordinate legislation made, under the Local Government Finance Act 1988 and section 149 of the Local Government and Housing Act 1989, for the purpose of or in connection with the issue of levies by the NRA; or
 - (b) they have effect in relation to any precept issued before 1st April 1990.
- (6) The repeal by this Act of sub-paragraph (2) of paragraph 71 of Schedule 25 to the 1989 Act (power to modify Part XII of the Companies Act 1985) shall not affect the continuing validity of anything done by virtue of the power conferred by that sub-paragraph to make regulations in relation to times before 1st September 1989.

Byelaws: prevention of waste of water etc.

- 3 (1) Subject to section 74(6) of the Water Industry Act 1991—
 - (a) any byelaws made or having effect as if made under section 17 of the 1945 Act and in force immediately before commencement by virtue of paragraph 19 of Schedule 26 to the 1989 Act; and
 - (b) section 19 of the 1945 Act so far as it relates to any such byelaws,shall continue to have effect (notwithstanding the repeals made by this Act) with the modifications for which that paragraph provides and as if every duty imposed on a water undertaker by virtue of those modifications were enforceable under section 18 of the Water Industry Act 1991 by the Secretary of State.
- (2) Notwithstanding any repeal by the 1989 Act or this Act, Part V of the 1945 Act shall accordingly have effect in relation to any provisions having effect under the said paragraph 19 and this paragraph as it had effect in relation to those provisions immediately before 1st September 1989.
- (3) In this paragraph and paragraph 4 below “the 1945 Act” means the Water Act 1945.

Byelaws preventing pollution

- 4 (1) Where immediately before commencement any byelaws have effect by virtue of paragraph 57 of Schedule 26 to the 1989 Act as if the power conferred by any enactment repealed by this Act included a power to make those byelaws, those byelaws shall continue to have effect as if the corresponding enactment contained in the consolidation Acts contained such a power.
- (2) Notwithstanding any repeal made by the 1989 Act or this Act, the provisions of subsections (2) to (5) of section 18 of the 1945 Act and of subsections (2), (4) and (5)

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of section 19 of the 1945 Act and, in relation to those provisions, the provisions of Part V of the 1945 Act shall have effect in relation to any byelaws under section 18 of the 1945 Act which have effect by virtue of paragraph 57(1) and (2) of Schedule 26 to the 1989 Act and the preceding provisions of this Schedule—

- (a) as they had effect in relation to those byelaws immediately before 1st September 1989; but
- (b) as if any references in those provisions of sections 18 and 19 of the 1945 Act to the statutory water undertakers who made the byelaws were references to the relevant body;

and every duty imposed on a water undertaker by virtue of paragraph (b) above shall be enforceable under section 18 of the Water Industry Act 1991 by the Secretary of State.

- (3) Without prejudice to the power of the Secretary of State under the Control of Pollution Act 1974 to bring the repeal of section 18 of the 1945 Act into force, the power of the Secretary of State under section 93 of the Water Resources Act 1991 to make an order for the purposes specified in that section shall include power, by an order under that section—
 - (a) to modify the operation of the provisions of this Schedule in relation to any byelaws under the said section 18 that have effect by virtue of those provisions; and
 - (b) to revoke or amend any such byelaws.
- (4) Without prejudice to the power conferred by virtue of sub-paragraph (3) above, the Secretary of State shall not be required to hold a local inquiry before exercising his power, under paragraph 5 of Schedule 10 to the Water Industry Act 1991 or under paragraph 5 of Schedule 26 to the Water Resources Act 1991, to revoke any byelaw having effect by virtue of paragraph 57(2) of Schedule 26 to the 1989 Act and this Schedule.
- (5) The repeal by this Act of subsections (8) and (9) of section 79 of the Water Resources Act 1963 shall not affect the application of those subsections (pending the repeal of subsection (1) of that section) in relation to any byelaws made by virtue of that subsection (1).
- (6) The repeal by this Act of paragraph 26 of Schedule 26 to the 1989 Act (byelaws under the Rivers (Prevention of Pollution) Act 1951) shall not prevent any order made under that paragraph from continuing, subject to any modification required by paragraph 1(2)(b) above, to have effect; nor shall it affect any power to revoke, amend or re-enact any such order.
- (7) In this paragraph “the relevant body”, in relation to any byelaws—
 - (a) in the case of byelaws made by a statutory water company, means that company;
 - (b) in the case of byelaws made by a water authority under section 22(6) of the Countryside Act 1968 (byelaws with respect to certain waterways) with respect to any waterway or land which—
 - (i) is owned by the water authority’s successor company (within the meaning of the 1989 Act); or
 - (ii) without being owned by the NRA, is managed by that company, means that company; and
 - (c) in any other case, means the NRA.

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Savings for local statutory provisions

- 5
- (1) Notwithstanding the repeal by this Act of subsection (8) of section 136 of the 1989 Act, any local statutory provision having effect with modifications by virtue of that subsection shall continue to have effect with those modifications after commencement.
 - (2) Notwithstanding the repeal by this Act of sub-paragraph (3) of paragraph 1 of Schedule 15 to the 1989 Act and the provisions of the 1976 Act by virtue of which the scheme or order in question was made or treated as made, the functions transferred to the NRA by that sub-paragraph shall continue to be functions of the NRA after commencement as if the scheme or order had been made under the corresponding provisions of the consolidation Acts.
 - (3) The revocation by this Act of any provisions of the Internal Drainage Boards (Finance) Regulations 1990 shall not affect the operation of those provisions (by virtue of regulation 4 of those regulations) in relation to any local Act.
 - (4) Section 11 of the Sevenoaks Water Order 1934 (protective provisions for the benefit of the British Railways Board) shall continue to have effect notwithstanding the repeal by this Act of the Water Supplies (Exceptional Shortage Orders) Act 1934.
 - (5) This paragraph shall be without prejudice to any power to amend local statutory provisions which is saved by virtue of section 2 of this Act.

Saving for transfer schemes

- 6
- (1) The repeal by this Act of provisions contained in Schedule 26 to the 1989 Act (transitional provisions) shall be without prejudice to the effect of any scheme made under Schedule 2 to that Act and, in particular, of any provision contained in such a scheme by virtue of paragraph 2(3)(c) of that Schedule 2.
 - (2) The repeal by this Act of sub-paragraph (3) of paragraph 29 of Schedule 26 to the 1989 Act shall not prevent any direction under that sub-paragraph from continuing (subject to any such modifications as are required by virtue of sub-paragraph (2)(b) of paragraph 1 above) to have effect in relation to any application which has effect—
 - (a) by virtue of a scheme under Schedule 2 to the 1989 Act, as an application by the successor company of a water authority; and
 - (b) by virtue of paragraph 1 above, as an application for a licence under Part II of the Water Resources Act 1991.

Water enterprise mergers before the transfer date

- 7
- The repeal by this Act of sections 29 and 30 of the 1989 Act (merger of water enterprises) shall not apply to those sections in so far as they have effect in relation to mergers taking place before 1st September 1989.

Non-domestic supplies

- 8
- The repeal by this Act of paragraph 8 of Schedule 26 to the 1989 Act shall not affect the power to make a determination under sub-paragraph (2) of that paragraph on any reference which remains outstanding at commencement; and any such determination shall have effect, after it is made, as a determination of the Director General of Water Services for the purposes of section 55 of the Water Industry Act 1991.

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Sewer requisitions

- 9 (1) Without prejudice to paragraph 1 above, any duty which has effect under sub-paragraph (1) of paragraph 14 of Schedule 26 to the 1989 Act as a duty owed by a sewerage undertaker under section 71 of that Act shall have effect after commencement as owed by that undertaker under section 98 of the Water Industry Act 1991; and, accordingly, sub-paragraph (5) of that paragraph 14 shall have effect for the purposes of anything saved by this sub-paragraph as it has effect for the purposes of anything saved by sub-paragraph (3) of that paragraph.
- (2) The repeal by this Act of section 72 of the 1989 Act shall be without prejudice to the application of subsection (8) of that section by paragraph 14(4) of Schedule 26 to that Act.

Appeals with respect to sewerage matters etc. begun before 1st September 1989

- 10 The repeals made by this Act shall not affect anything saved by virtue of sub-paragraph (2) of paragraph 13 of Schedule 26 to the 1989 Act (saving for certain appeals and references); but any determination made after commencement by virtue of that sub-paragraph under an enactment repealed by this Act shall have effect as if made by the Director General of Water Services under the corresponding provision of the Water Industry Act 1991.

Savings in respect of charging provisions

- 11 (1) Notwithstanding its repeal by the 1989 Act, section 4 of the Public Utility Transfers and Water Charges Act 1988 (approval of metering trials schemes) shall apply, with the necessary modifications, to so much of any scheme made by a water undertaker under section 143 of the Water Industry Act 1991 as amends or revokes any scheme which—
- (a) was made in accordance with the said section 4 before 1st September 1989 and was either in force immediately before that date or due to come into force after that date; and
 - (b) continues in force by virtue of paragraph 1 above as a scheme under that section 143.
- (2) The repeal by this Act of sub-paragraph (6) of paragraph 16 of Schedule 26 to the 1989 Act shall not prevent any regulations which have effect in accordance with that sub-paragraph from continuing to have effect after commencement in accordance with paragraph 1 above as if the power in section 149 of the Water Industry Act 1991 included power to make or revoke any such provision as might have been made by virtue of section 5(3)(e) of the Public Utility Transfers and Water Charges Act 1988.

Commissioners of Sewers

- 12 Commissioners of Sewers in existence immediately before commencement—
- (a) shall continue (subject to any scheme under section 3 of the Land Drainage Act 1991 or to any other scheme under that Act affecting their powers) to have the powers then exercisable by them or, in so far as those powers were exercisable under an enactment repealed by this Act, the corresponding powers under the Land Drainage Act 1991; and
 - (b) shall have those powers subject to the same conditions, restrictions and qualifications or, in so far as the enactments imposing those conditions,

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restrictions or qualifications are repealed by this Act, the corresponding conditions, restrictions and qualifications in the Land Drainage Act 1991.

PART II

TRANSITORY PROVISIONS IN RESPECT OF FLOOD DEFENCE AND LAND DRAINAGE

Disqualification for membership of regional flood defence committee

- 13 Where a person is disqualified for membership of a regional flood defence committee by virtue of having been adjudged bankrupt before the coming into force of the Insolvency Act 1986, the rules applicable apart from the repeals made by this Act, rather than paragraph 3(2) of Schedule 4 to the Water Resources Act 1991, shall apply for determining when that disqualification shall cease.

Savings in relation to local flood defence schemes

- 14 (1) Where immediately before commencement—
- (a) any scheme or committee falls to be treated as a local flood defence scheme or a local flood defence committee by virtue of subsection (2) of section 139 of the 1989 Act; or
 - (b) any person holds office in accordance with subsection (4) of that section, that scheme or committee shall continue to be so treated or, as the case may be, that person shall continue so to hold office, notwithstanding the provisions of section 13 of, or Schedule 4 to, the Water Resources Act 1991 or the repeal of any enactment by this Act.
- (2) Where a person is disqualified for membership of a local flood defence committee by virtue of having been adjudged bankrupt before the coming into force of the Insolvency Act 1986, the rules applicable apart from the repeals made by this Act, rather than paragraph 3(2) of Schedule 4 to the Water Resources Act 1991, shall apply for determining when that disqualification shall cease.

Drainage rates etc. for the financial years beginning before 1993

- 15 (1) The repeals and revocations made by this Act shall not affect—
- (a) any provisions regulating, in relation to a drainage district or sub-district, the apportionment for any financial year beginning before 1993 between drainage rates and special levies of any expenses of an internal drainage board; or
 - (b) the powers of the drainage board for any internal drainage district to make a drainage rate, or to levy differential drainage rates, in respect of a financial year beginning before 1993;
- and the applicable provisions of the 1976 Act and of the Internal Drainage Boards (Finance) Regulations 1990 shall continue, notwithstanding those repeals and revocations, to have effect (instead of any provisions of the Land Drainage Act 1991) for the purposes of, and in connection with, the making or levying of any such apportionment or rate and otherwise in relation to drainage rates made in respect of any such financial year.

- (2) Where—

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- (a) any order has been made under section 68 of the 1976 Act or is made under that section by virtue of sub-paragraph (1) above or any other thing has been or is done under or for the purposes of any provision having effect by virtue of that sub-paragraph in relation to drainage rates made in respect of a financial year beginning before 1993; and
- (b) apart from the repeals and revocations made by this Act, that order or thing would have effect both in relation to a rate so made and in relation to drainage rates made in respect of one or more financial years beginning in or after 1993,

that order or other thing shall have effect in relation to the drainage rates made in respect of the latter years as if it had been made or done under or for the purposes of the corresponding provision of Part IV of the Land Drainage Act 1991; and references in that Act, in any other enactment or in any subordinate legislation or document to orders made under that Act or to any other thing done under or for the purposes of that Act shall be construed accordingly.

- (3) References in paragraphs 17 to 19 below, in relation to any drainage rate made for a financial year beginning before 1993, to section 64 of the 1976 Act include references to that section as it has effect, subject to the provisions of the Internal Drainage Boards (Finance) Regulations 1990, by virtue of sub-paragraph (1) above.

Restrictions on appointed members of internal drainage boards until 1993

- 16 (1) In the period ending with 31st March 1993 the number of appointed members of an internal drainage board—
 - (a) shall not exceed two-fifths of the number of all the members of the board; and
 - (b) subject to paragraph (a) above, shall be such that the number of appointed members bears, as nearly as possible, the same proportion to the maximum number of all the members of the board as the first of the following amounts bears to the second, that is to say—
 - (i) the aggregate amount raised by the board by means of drainage rates assessed on land other than agricultural land and agricultural buildings in respect of the financial year beginning in 1989 (including any amount payable to the board under an agreement made under section 81 of the 1976 Act); and
 - (ii) the total amount raised by that board by means of drainage rates in respect of that financial year.
- (2) If, in that period, more than one charging authority is entitled to appoint members of an internal drainage board under paragraph 5 of Schedule 1 to the Land Drainage Act 1991—
 - (a) each such authority may appoint the number of members of the board calculated by multiplying the maximum number of appointed members by the relevant fraction for that authority and disregarding any fraction in the resulting product; and
 - (b) where in respect of the board—
 - (i) any such authority has appointed a member; or
 - (ii) the calculation referred to in paragraph (a) above results in respect of each such authority in a product of less than one,

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the charging authorities shall, unless they otherwise agree, jointly appoint the number of members of the board representing the difference between the maximum number of appointed members and the aggregate number of members that may be appointed by individual charging authorities or, as the case may be, constituting the maximum number of appointed members.

- (3) For the purposes of sub-paragraph (2) above the relevant fraction, in relation to a charging authority, is the fraction which bears the same proportion to one as the aggregate for that authority of the values specified in sub-paragraph (4) below bears to the sum of such aggregate values for all the local charging authorities whose areas lie within the board's district.
- (4) The values mentioned in sub-paragraph (3) above are, in relation to any internal drainage board, the following values for the area of every charging authority whose area lies wholly within the internal drainage district of that board and for such parts of the areas of other charging authorities as lie within that district, that is to say—
- (a) the rateable values shown, on 1st January 1990, for hereditaments in the valuation lists maintained under Part V of the General Rate Act 1967;
 - (b) the annual values of hereditaments, other than agricultural land and agricultural buildings shown on 1st January 1990 in the register maintained by the board by virtue of the Registers of Drainage Boards Regulations 1968.
- (5) In this paragraph—
- “agricultural buildings” has the meaning provided by paragraphs 2 to 8 of Schedule 5 to the Local Government Finance Act 1988;
 - “agricultural land” has the meaning provided by paragraphs 2 and 4 to 8 of that Schedule;
 - “appointed members”, in relation to an internal drainage board, means members of the board appointed by one or more charging authorities under Part II of Schedule 1 to the Land Drainage Act 1991 or, at a time before commencement, under the corresponding provisions of the Internal Drainage Boards (Finance) Regulations 1990;
 - “charging authority” has the same meaning as in the Land Drainage Act 1991.

Qualification of electors of members of internal drainage boards—pre 1993 rates

- 17 (1) Paragraph 2 of Schedule 1 to the Land Drainage Act 1991 (persons entitled to vote in elections of internal drainage board members) shall have effect until the beginning of the financial year beginning in 1993 as if—
- (a) in sub-paragraph (1), for the reference to occupying land on which a drainage rate has been levied there were substituted a reference to owning or occupying such land; and
 - (b) sub-paragraph (2) prevented a person from being entitled to be an elector in respect of his ownership of any land if any amount in respect of an owner's drainage rate levied on that land remained unpaid for more than a month at the date of the election.
- (2) In paragraph 3(1) of that Schedule, a reference to the assessable value of any land, in relation to a relevant date before 1st April 1993, is a reference to the annual value on which any such drainage rate would be assessable in accordance with section 64 of the 1976 Act.

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- (3) In this paragraph “the relevant date” has the same meaning as in paragraph 3 of Schedule 1 to that Act of 1991.

Qualification for election to internal drainage board—pre 1993 rates

- 18 (1) Paragraph 4 of Schedule 1 to the Land Drainage Act 1991, shall have effect until the beginning of the financial year beginning in 1993, as if—
- (a) in paragraphs (a) and (d) of sub-paragraph (1), the requirement for the purposes of those paragraphs that a person who is the owner of land such as is mentioned in those paragraphs should also be its occupier were omitted; and
 - (b) in paragraph (c) of that sub-paragraph, the reference to the occupier of any such land as is mentioned in that paragraph were a reference to a person who is the owner or the occupier of any such land.
- (2) Subject to sub-paragraph (3) below, a person shall not, by virtue of paragraph 4(1)(a), (c) or (d) of Schedule 1 to the Land Drainage Act 1991 and sub-paragraph (1) above, be qualified for election as being the owner of any land or a person nominated by the owner of any land if at the date of the election any amount demanded in respect of any owner’s drainage rate levied in respect of that land remains unpaid.
- (3) Sub-paragraph (2) above shall not apply if—
- (a) the date of the election falls less than 6 months after the beginning of the period for which the unpaid rate was made; or
 - (b) the land was occupied, when the amount was demanded, by a person who, as between the owner and the occupier, was liable to pay the owner’s drainage rate.
- (4) In paragraph 4(1) of Schedule 1 to the Land Drainage Act 1991, a reference to the assessable value of land is, in relation to a relevant date before 1st April 1993, a reference to the annual value on which any such a drainage rate would be assessable in accordance with section 64 of the 1976 Act.
- (5) In this paragraph “the relevant date” has the same meaning as in paragraph 4 of Schedule 1 to the Land Drainage Act 1991.

Qualification for making certain applications—pre-1993 rates

- 19 (1) Subsections (2) and (3) of section 72 of the Land Drainage Act 1991 (qualification for making certain applications) shall have effect in relation to qualification by reference to a drainage rate made in respect of a financial year beginning before 1993, as if a reference in those subsections to the occupiers of any land included a reference to the owners of the land.
- (2) In paragraph (b)(iii) of subsection (2) of that section, a reference to the assessable value of land is, where the rate referred to in that paragraph was made for a year beginning before 1993, a reference to the annual value on which any such drainage rate would be assessable in accordance with section 64 of the 1976 Act.