

*Status:* Point in time view as at 21/03/2000. This version of this cross heading contains provisions that are prospective.

*Changes to legislation:* Environment Act 1995, Cross Heading: The Water Resources Act 1991 is up to date with all changes known to be in force on or before 27 June 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)

## SCHEDULES

### SCHEDULE 22

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *The Water Resources Act 1991*

- 128 Subject to the other provisions of this Act, in the <sup>M1</sup>Water Resources Act 1991, for the word “Authority” or “Authority’s”, wherever occurring, other than in section 119(1), there shall be substituted respectively the word “Agency” or “Agency’s”.

#### Marginal Citations

**M1** 1991 c. 57.

- 129 Sections 1 to 14 of that Act (the National Rivers Authority and committees with functions in relation to that Authority) shall cease to have effect.
- 130 In section 15 of that Act (general duties with respect to the water industry), in subsection (2)(a) (provisions conferring powers in the exercise of which the Ministers are to take into account the duties imposed on the Agency by subsection (1)) after the words “by virtue of” there shall be inserted the words “the 1995 Act, ”.
- 131 Sections 16 to 19 of that Act (which relate to the environmental and recreational duties of the National Rivers Authority and the general management of resources by that Authority) shall cease to have effect.
- 132 In section 20 of that Act (water resources management schemes) in subsection (1) of that section (duty to enter into arrangements with water undertakers for the management or operation of certain waters etc) for the words “section 19(1) above” there shall be substituted the words “ section 6(2) of the 1995 Act ”.
- 133 (1) In section 21 of that Act (minimum acceptable flows) in subsection (3), at the end of paragraph (f) (consultation with person authorised by a licence under Part I of the <sup>M2</sup>Electricity Act 1989 to generate electricity) there shall be added the words “ who has a right to abstract water from those waters ”.
- (2) In subsection (4)(b) of that section (which refers to certain enactments which are repealed, but whose effect is reproduced, by this Act) for the words “sections 2(2), 16 and 17 above” there shall be substituted the words “ sections 6(1), 7 and 8 of the 1995 Act ”.

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#### Commencement Information

- II** Sch. 22 para. 133 wholly in force at 1.4.1996; Sch. 22 para. 133 not in force at Royal Assent see s. 125(3); Sch. 22 para. 133(1) in force at 21.9.1995 by [S.I. 1995/1983, art. 3](#); Sch. 22 para. 133(2) in force at 1.4.1996 by [S.I. 1996/186, art. 3](#)

#### Marginal Citations

- M2** 1989 c. 15.

134 In section 43 of that Act (appeals to the Secretary of State from decisions with respect to licences) after subsection (1) there shall be inserted—

“(1A) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).”

#### PROSPECTIVE

135 (1) In section 50 of that Act, in subsection (1) (power to make regulations, in relation to cases to which section 49 applies, for conferring succession rights to abstraction licences where a person becomes the occupier of part of the relevant land) for the words “cases to which section 49 above applies” there shall be substituted the words “cases in which the holder of a licence under this Chapter to abstract water (“the prior holder”) is the occupier of the whole or part of the land specified in the licence as the land on which water abstracted in pursuance of the licence is to be used (“the relevant land”)”.

(2) That section shall have effect, and be taken always to have had effect, as if it had originally been enacted with the amendment made by sub-paragraph (1) above.

136 Section 58 (revocation of licence for non-payment of charges) shall cease to have effect.

137 Section 68 of that Act (power by order to establish a tribunal to which certain appeals and references shall lie) shall cease to have effect.

138 Section 69(5) of that Act (which refers to the tribunal established under section 68) shall cease to have effect.

139 (1) Section 73 of that Act (power to make ordinary and emergency drought orders) shall be amended in accordance with the following provisions of this paragraph.

(2) In subsection (1) (power to make ordinary drought orders) for the words from the beginning to “then” there shall be substituted the words—

“(1) If the Secretary of State is satisfied that, by reason of an exceptional shortage of rain, there exists or is threatened—

- (a) a serious deficiency of supplies of water in any area, or
- (b) such a deficiency in the flow or level of water in any inland waters as to pose a serious threat to any of the flora or fauna which are dependent on those waters,

then.”

(3) In subsection (3) (power to make drought order not to be exercisable except where an application is made by the National Rivers Authority or a water undertaker)—

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- (a) for the words “except where” there shall be substituted the word “unless”; and
- (b) at the beginning of paragraph (b) (water undertakers) there shall be inserted the words “except in the case of an ordinary drought order by virtue of subsection (1)(b) above,”.

140 After section 79 of that Act (compensation and charges where drought order made) there shall be inserted—

**“79A Drought permits.**

- (1) If the Agency is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened then, subject to the following provisions of this section, it may, upon the application of a water undertaker which supplies water to premises in that area, issue to that undertaker a drought permit making such provision authorised by this section as appears to the Agency to be expedient with a view to meeting the deficiency.
- (2) A drought permit may contain any of the following provisions, that is to say—
  - (a) provision authorising the water undertaker to which it is issued to take water from any source specified in the permit subject to any conditions or restrictions so specified;
  - (b) provision suspending or modifying, subject to any conditions specified in the permit, any restriction or obligation to which that undertaker is subject as respects the taking of water from any source.
- (3) A drought permit shall specify—
  - (a) the day on which it comes into force; and
  - (b) the period for which, subject to subsections (4) and (5) below, any authorisation given, or suspension or modification effected, by the permit is to have effect.
- (4) Subject to subsection (5) below, the period for which—
  - (a) an authorisation given by a drought permit, or
  - (b) a suspension or modification effected by such a permit,has effect shall expire before the end of the period of six months beginning with the day on which the permit comes into force.
- (5) At any time before the expiration of the period for which such an authorisation, suspension or modification has effect, the Agency may, by giving notice to the water undertaker to which the permit in question was issued, extend that period, but not so as to extend it beyond the end of the period of one year beginning with the day on which the permit came into force.
- (6) A drought permit which—
  - (a) authorises the taking of water from a source from which water is supplied to an inland navigation; or
  - (b) suspends or modifies—
    - (i) a restriction as respects the taking of water from a source from which water is supplied to an inland navigation; or

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- (ii) an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation,

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

- (7) Schedule 8 to this Act shall have effect with respect to the procedure on an application for a drought permit as it has effect with respect to the procedure on an application for a drought order, but with the following modifications, that is to say—
- (a) with the substitution for any reference to a drought order of a reference to a drought permit;
  - (b) with the substitution for any reference to the Secretary of State of a reference to the Agency;
  - (c) with the omission of the reference to the Agency in the Table in paragraph 1;
  - (d) with the insertion, in paragraph 1(3)(c), of a requirement that the notice in question shall specify the address at which any objections are to be made to the Agency; and
  - (e) with the omission—
    - (i) of paragraph 2(1)(a) and the word “either” immediately preceding it, and
    - (ii) of paragraph 2(6).
- (8) For the purposes of sections 125 to 129 below any water authorised by a drought permit to be abstracted from a source of supply shall be treated as if it had been authorised to be so abstracted by a licence granted under Chapter II of this Part, whether the water undertaker to which the permit is issued is the holder of such a licence or not.
- (9) Section 79 above and Schedule 9 to this Act shall apply in relation to drought permits and their issue as they apply in relation to ordinary drought orders and their making.
- (10) A drought permit may—
- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provisions as the Agency considers appropriate.
- (11) In this section—
- “compensation water” has the same meaning as in section 77 above;
- “drought permit” means a drought permit under this section;
- “inland navigation” has the same meaning as in section 77 above.”
- 141 In section 80 of that Act (offences against drought orders)—
- (a) in subsection (1)(a) (taking or using water otherwise than in accordance with any condition or restriction imposed by or under a drought order) for

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the words “so imposed” there shall be substituted the words “imposed by or under any drought order or by any drought permit”;

- (b) in subsection (2)(a) (failure to construct or maintain measuring apparatus required by any drought order) after the words “by any drought order” there shall be inserted the words “or drought permit”; and
- (c) in subsection (2)(b) (failure to allow person authorised by or under any such order to inspect etc apparatus or records) after the words “by or under any such order” there shall be inserted the words “or by virtue of any such permit”.

142 After section 90 of that Act (offences in connection with deposits and vegetation in rivers) there shall be inserted—

*“ Consents for the purposes of sections 88 to 90*

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

- (1) Any application for a consent for the purposes of section 89(4)(a) or 90(1) or (2) above—
  - (a) must be made on a form provided for the purpose by the Agency, and
  - (b) must be advertised in such manner as may be required by regulations made by the Secretary of State,except that paragraph (b) above shall not have effect in the case of an application of any class or description specified in the regulations as being exempt from the requirements of that paragraph.
- (2) The applicant for such a consent must, at the time when he makes his application, provide the Agency—
  - (a) with all such information as it reasonably requires; and
  - (b) with all such information as may be prescribed for the purpose by the Secretary of State.
- (3) The information required by subsection (2) above must be provided either on, or together with, the form mentioned in subsection (1) above.
- (4) The Agency may give the applicant notice requiring him to provide it with all such further information of any description specified in the notice as it may require for the purpose of determining the application.
- (5) If the applicant fails to provide the Agency with any information required under subsection (4) above, the Agency may refuse to proceed with the application or refuse to proceed with it until the information is provided.

#### **90B Enforcement notices.**

- (1) If the Agency is of the opinion that the holder of a relevant consent is contravening any condition of the consent, or is likely to contravene any such condition, the Agency may serve on him a notice (an “enforcement notice”).
- (2) An enforcement notice shall—
  - (a) state that the Agency is of the said opinion;
  - (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise;

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- (c) specify the steps that must be taken to remedy the contravention or, as the case may be, to remedy the matters making it likely that the contravention will arise; and
  - (d) specify the period within which those steps must be taken.
- (3) Any person who fails to comply with any requirement imposed by an enforcement notice shall be guilty of an offence and liable—
- (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000 or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (4) If the Agency is of the opinion that proceedings for an offence under subsection (3) above would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice, the Agency may take proceedings in the High Court for the purpose of securing compliance with the notice.
- (5) The Secretary of State may, if he thinks fit in relation to any person, give to the Agency directions as to whether the Agency should exercise its powers under this section and as to the steps which must be taken.
- (6) In this section—
- “relevant consent” means—
  - (a) a consent for the purposes of section 89(4)(a) or 90(1) or (2) above; or
  - (b) a discharge consent, within the meaning of section 91 below; and
- “the holder”, in relation to a relevant consent, is the person who has the consent in question.”

#### **Commencement Information**

**I2** Sch. 22 para. 142 wholly in force at 31.12.1996; Sch. 22 para. 142 not in force at Royal Assent see s. 125(3); Sch. 22 para. 142 in force for specified purposes at 21.11.1996 by [S.I. 1996/2909](#), [art. 2](#) (with [art. 4](#)); Sch. 22 para. 142 in force at 31.12.1996 insofar as not already in force by [S.I. 1996/2909](#), [art. 3](#) (subject to [art. 4](#))

- 143 (1) In section 91 of that Act (appeals in respect of consents under Chapter II of Part III of that Act), in subsection (1) (which specifies the decisions which are subject to appeal)—
- (a) in paragraph (d) (which refers to paragraph 7(1) or (2) of Schedule 10) for the words “7(1)” there shall be substituted the words “8(1)”; and
  - (b) at the end there shall be added—
    - “(g) has refused a person a variation of any such consent as is mentioned in paragraphs (a) to (f) above or, in allowing any such variation, has made the consent subject to conditions; or
    - (h) has served an enforcement notice on any person.”
- (2) In subsection (2) of that section (persons who may appeal)—

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- (a) after the words “who applied for the consent” there shall be inserted the words “or variation”; and
- (b) after the words “would be authorised by the consent” there shall be inserted the words “, or the person on whom the enforcement notice was served.”.

(3) For subsections (3) to (7) of that section there shall be substituted—

“(2A) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).

(2B) An appeal under this section shall, if and to the extent required by regulations under subsection (2K) below, be advertised in such manner as may be prescribed by regulations under that subsection.

(2C) If either party to the appeal so requests or the Secretary of State so decides, an appeal shall be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private).

(2D) On determining an appeal brought by virtue of any of paragraphs (a) to (g) of subsection (1) above against a decision of the Agency, the Secretary of State—

- (a) may affirm the decision;
- (b) where the decision was a refusal to grant a consent or a variation of a consent, may direct the Agency to grant the consent or to vary the consent, as the case may be;
- (c) where the decision was as to the conditions of a consent, may quash all or any of those conditions;
- (d) where the decision was to revoke a consent, may quash the decision;
- (e) where the decision relates to a period specified for the purposes of paragraph 8(1) or (2) of Schedule 10 to this Act, may modify any provisions specifying that period;

and where he exercises any of the powers in paragraphs (b), (c) or (d) above, he may give directions as to the conditions to which the consent is to be subject.

(2E) On the determination of an appeal brought by virtue of paragraph (h) of subsection (1) above, the Secretary of State may either quash or affirm the enforcement notice and, if he affirms it, may do so either in its original form or with such modifications as he may in the circumstances think fit.

(2F) Subject to subsection (2G) below, where an appeal is brought by virtue of subsection (1)(c) above against a decision—

- (a) to revoke a discharge consent,
- (b) to modify the conditions of any such consent, or
- (c) to provide that any such consent which was unconditional shall be subject to conditions,

the revocation, modification or provision shall not take effect pending the final determination or the withdrawal of the appeal.

(2G) Subsection (2F) above shall not apply to a decision in the case of which the notice effecting the revocation, modification or provision in question includes a statement that in the opinion of the Agency it is necessary for the purpose of preventing or, where that is not practicable, minimising—

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- (a) the entry into controlled waters of any poisonous, noxious or polluting matter or any solid waste matter, or
  - (b) harm to human health,
- that that subsection should not apply.
- (2H) Where the decision under appeal is one falling within subsection (2G) above, if, on the application of the holder or former holder of the consent, the Secretary of State or other person determining the appeal determines that the Agency acted unreasonably in excluding the application of subsection (2F) above, then—
- (a) if the appeal is still pending at the end of the day on which the determination is made, subsection (2F) above shall apply to the decision from the end of that day; and
  - (b) the holder or former holder of the consent shall be entitled to recover compensation from the Agency in respect of any loss suffered by him in consequence of the exclusion of the application of that subsection;
- and any dispute as to a person’s entitlement to such compensation or as to the amount of it shall be determined by arbitration.
- (2J) Where an appeal is brought under this section against an enforcement notice, the bringing of the appeal shall not have the effect of suspending the operation of the notice.
- (2K) Provision may be made by the Secretary of State by regulations with respect to appeals under this section and in particular—
- (a) as to the period within which and the manner in which appeals are to be brought; and
  - (b) as to the manner in which appeals are to be considered.”
- (4) In subsection (8) of that section (which refers to paragraph 5 of Schedule 10) for the word “5” there shall be substituted the word “6”.

#### **Commencement Information**

**I3** Sch. 22 para. 143 wholly in force at 31.12.1996; Sch. 22 para. 143 not in force at Royal Assent see s. 125(3); Sch. 22 para. 143 in force for specified purposes at 21.11.1996 by [S.I. 1996/2909](#), [art. 2](#) (with [art. 4](#)); Sch. 22 para. 143 in force at 31.12.1996 insofar as not already in force by [S.I. 1996/2909](#), [art. 3](#) (subject to [art. 4](#))

144 In section 92 of that Act (requirements to take precautions against pollution) after subsection (2) (which includes provision for regulations to provide for appeals to the Secretary of State) there shall be added—

“(3) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).”

145 In section 96 of that Act (regulations with respect to consents required by virtue of section 93 etc, including provision with respect to appeals) after subsection (3) there shall be added—

“(4) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).”



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- 146 Section 105(1) of that Act (National Rivers Authority to exercise general supervision over matters relating to flood defence) shall cease to have effect.
- 147 (1) In section 110 of that Act (applications for consents and approvals under section 109) in subsection (1) (which confers power to charge an application fee of £50 or such other sum as may be specified by order made by the Ministers) for the words “specified by order made by the Ministers” there shall be substituted the word “prescribed”.
- (2) In subsection (4)(b) of that section (which provides for questions as to unreasonable withholding of any consent or approval to be referred to the Ministers or the Secretary of State if the parties cannot agree on an arbitrator) for the words “the Ministers” there shall be substituted the words “the Minister”.
- (3) After subsection (5) of that section there shall be inserted—
- “(6) In subsection (1) above “prescribed” means specified in, or determined in accordance with, an order made by the Ministers; and any such order may make different provision for different cases, including different provision in relation to different persons, circumstances or localities.”
- 148 Section 114 (general fisheries duty of the National Rivers Authority) shall cease to have effect.
- 149 Section 117 (general financial duties of the National Rivers Authority) shall cease to have effect.
- 150 (1) Section 118 of that Act (special duties with respect to flood defence revenue) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1)(b) (such revenue to be disregarded in determining the amount of any surplus for the purposes of section 117(3)) for the words “section 117(3) above” there shall be substituted the words “section 44(4) of the 1995 Act”.
- (3) In subsection (2)(b) (flood defence revenue to include revenue raised by general drainage charges under sections 134 to 136) for the words “to 136” there shall be substituted the words “and 135”.
- 151 (1) In section 119 of that Act (duties with respect to certain funds raised under local enactments) for subsection (1) (duty of the National Rivers Authority, in respect of funds created for fishery purposes under local enactments, not to use those funds except for the purposes for which they could have been used if the <sup>M3</sup>Water Resources Act 1963 had not been passed) there shall be substituted—
- “(1) Where the Agency holds any funds, or any interest in any funds, which immediately before the transfer date the National Rivers Authority, by virtue of this subsection as originally enacted, was not permitted to use except for particular purposes, those funds or that interest shall not be used except for the purposes for which they could be used by virtue of this subsection as originally enacted.
- (1A) For the purposes of subsection (1) above, “the transfer date” has the same meaning as in Part I of the 1995 Act.”
- (2) In subsection (2) of that section (certain funds raised under local enactments to be disregarded in determining the amount of any surplus for the purposes of section 117(3)) for the words “section 117(3) above” there shall be substituted the words “section 44(3) of the 1995 Act”.

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### Marginal Citations

M3 1963 c. 38.

- 152 Sections 121 to 124 of that Act (accounts of the Authority, audit and schemes imposing water resources charges) shall cease to have effect.
- 153 Sections 126(6) and 129(4) of that Act (each of which applies section 68) shall cease to have effect.
- 154 Sections 131 and 132 of that Act (schemes of charges in connection with control of pollution) shall cease to have effect.
- 155 Section 146 of that Act (revenue grants by the Secretary of State to the National Rivers Authority) shall cease to have effect.
- 156 Sections 150 to 153 of that Act (grants for national security purposes, borrowing powers of the National Rivers Authority, loans to the Authority, and Treasury guarantees of the Authority’s borrowing) shall cease to have effect.
- 157 In section 154 of that Act (compulsory purchase etc) in subsection (6), for the words “(including section 4 above) or otherwise” there shall be substituted the words “or otherwise (including section 37 of the 1995 Act (incidental general powers of the Agency))”.
- 158 In section 156 of that Act (acquisition of land etc for fisheries purposes) for the words “Without prejudice to section 4 above”, in each place where they occur, there shall be substituted the words “Without prejudice to section 37 of the 1995 Act (incidental general powers of the Agency)”.
- 159 In section 157 of that Act (restriction on disposals of compulsorily acquired land) for subsection (6) (meaning of “compulsorily acquired land”) there shall be substituted—
- “(6) In this section “compulsorily acquired land”, in relation to the Agency, means any land of the Agency which—
- (a) was acquired by the Agency compulsorily under the provisions of section 154 above or of an order under section 168 below;
  - (b) was acquired by the Agency at a time when it was authorised under those provisions to acquire the land compulsorily;
  - (c) being land which has been transferred to the Agency from the Authority by section 3 of the 1995 Act, was acquired by the Authority—
    - (i) compulsorily, under the provisions of section 154 above or of an order under section 168 below or under the provisions of section 151 of the <sup>M4</sup>Water Act 1989 or of an order under section 155 of that Act; or
    - (ii) at a time when it was authorised under those provisions to acquire the land compulsorily;
  - (d) being land—
    - (i) which has been so transferred, and
    - (ii) which was transferred to the Authority in accordance with a scheme under Schedule 2 to the <sup>M5</sup>Water Act 1989,

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- was acquired by a predecessor of the Authority compulsorily under so much of any enactment in force at any time before 1st September 1989 as conferred powers of compulsory acquisition; or
- (e) being land transferred as mentioned in sub-paragraphs (i) and (ii) of paragraph (d) above, was acquired by such a predecessor at a time when it was authorised to acquire the land by virtue of any such powers as are mentioned in that paragraph.”

#### Marginal Citations

M4 1989 c. 15.

M5 1989 c. 29.

- 160 In section 158 of that Act (works agreements for water resources purposes) in subsection (1) (which is expressed to be without prejudice to the generality of the powers conferred by section 4) for the words “section 4 above” there shall be substituted the words “section 37 of the 1995 Act (incidental general powers of the Agency)”.
- 161 (1) Section 161 of that Act (anti-pollution works and operations) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (power, subject to subsection (2), to carry out works and operations etc) for the words “Subject to subsection (2) below,” there shall be substituted the words “Subject to subsections (1A) and (2) below,”.
- (3) After that subsection there shall be inserted—
- “(1A) Without prejudice to the power of the Agency to carry out investigations under subsection (1) above, the power conferred by that subsection to carry out works and operations shall only be exercisable in a case where—
- (a) the Agency considers it necessary to carry out forthwith any works or operations falling within paragraph (a) or (b) of that subsection; or
- (b) it appears to the Agency, after reasonable inquiry, that no person can be found on whom to serve a works notice under section 161A below.”
- 162 After that section there shall be inserted—

#### **“161A Notices requiring persons to carry out anti-pollution works and operations.**

- (1) Subject to the following provisions of this section, where it appears to the Agency that any poisonous, noxious or polluting matter or any solid waste matter is likely to enter, or to be or to have been present in, any controlled waters, the Agency shall be entitled to serve a works notice on any person who, as the case may be,—
- (a) caused or knowingly permitted the matter in question to be present at the place from which it is likely, in the opinion of the Agency, to enter any controlled waters; or
- (b) caused or knowingly permitted the matter in question to be present in any controlled waters.

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*Status: Point in time view as at 21/03/2000. This version of this cross heading contains provisions that are prospective.*

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- (2) For the purposes of this section, a “works notice” is a notice requiring the person on whom it is served to carry out such of the following works or operations as may be specified in the notice, that is to say—
- (a) in a case where the matter in question appears likely to enter any controlled waters, works or operations for the purpose of preventing it from doing so; or
  - (b) in a case where the matter appears to be or to have been present in any controlled waters, works or operations for the purpose—
    - (i) of removing or disposing of the matter;
    - (ii) of remedying or mitigating any pollution caused by its presence in the waters; or
    - (iii) so far as it is reasonably practicable to do so, of restoring the waters, including any flora and fauna dependent on the aquatic environment of the waters, to their state immediately before the matter became present in the waters.
- (3) A works notice—
- (a) must specify the periods within which the person on whom it is served is required to do each of the things specified in the notice; and
  - (b) is without prejudice to the powers of the Agency by virtue of section 161(1A)(a) above.
- (4) Before serving a works notice on any person, the Agency shall reasonably endeavour to consult that person concerning the works or operations which are to be specified in the notice.
- (5) The Secretary of State may by regulations make provision for or in connection with—
- (a) the form or content of works notices;
  - (b) requirements for consultation, before the service of a works notice, with persons other than the person on whom that notice is to be served;
  - (c) steps to be taken for the purposes of any consultation required under subsection (4) above or regulations made by virtue of paragraph (b) above; or
  - (d) any other steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of a works notice.
- (6) A works notice shall not be regarded as invalid, or as invalidly served, by reason only of any failure to comply with the requirements of subsection (4) above or of regulations made by virtue of paragraph (b) of subsection (5) above.
- (7) Nothing in subsection (1) above shall entitle the Agency to require the carrying out of any works or operations which would impede or prevent the making of any discharge in pursuance of a consent given under Chapter II of Part III of this Act.
- (8) No works notice shall be served on any person requiring him to carry out any works or operations in respect of water from an abandoned mine or an abandoned part of a mine which that person permitted to reach such a place as is mentioned in subsection (1)(a) above or to enter any controlled waters.

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- (9) Subsection (8) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.
- (10) Subsections (3B) and (3C) of section 89 above shall apply in relation to subsections (8) and (9) above as they apply in relation to subsections (3) and (3A) of that section.
- (11) Where the Agency—
- (a) carries out any such investigations as are mentioned in section 161(1) above, and
  - (b) serves a works notice on a person in connection with the matter to which the investigations relate,
- it shall (unless the notice is quashed or withdrawn) be entitled to recover the costs or expenses reasonably incurred in carrying out those investigations from that person.
- (12) The Secretary of State may, if he thinks fit in relation to any person, give directions to the Agency as to whether or how it should exercise its powers under this section.
- (13) In this section—
- “controlled waters” has the same meaning as in Part III of this Act;
  - “mine” has the same meaning as in the <sup>M6</sup>Mines and Quarries Act 1954.

#### **161B Grant of, and compensation for, rights of entry etc.**

- (1) A works notice may require a person to carry out works or operations in relation to any land or waters notwithstanding that he is not entitled to carry out those works or operations.
- (2) Any person whose consent is required before any works or operations required by a works notice may be carried out shall grant, or join in granting, such rights in relation to any land or waters as will enable the person on whom the works notice is served to comply with any requirements imposed by the works notice.
- (3) Before serving a works notice, the Agency shall reasonably endeavour to consult every person who appears to it—
- (a) to be the owner or occupier of any relevant land, and
  - (b) to be a person who might be required by subsection (2) above to grant, or join in granting, any rights,
- concerning the rights which that person may be so required to grant.
- (4) A works notice shall not be regarded as invalid, or as invalidly served, by reason only of any failure to comply with the requirements of subsection (3) above.
- (5) A person who grants, or joins in granting, any rights pursuant to subsection (2) above shall be entitled, on making an application within such period as may be prescribed and in such manner as may be prescribed to

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such person as may be prescribed, to be paid by the person on whom the works notice in question is served compensation of such amount as may be determined in such manner as may be prescribed.

(6) Without prejudice to the generality of the regulations that may be made by virtue of subsection (5) above, regulations by virtue of that subsection may make such provision in relation to compensation under this section as may be made by regulations by virtue of subsection (4) of section 35A of the <sup>M7</sup>Environmental Protection Act 1990 in relation to compensation under that section.

(7) In this section—

“prescribed” means prescribed in regulations made by the Secretary of State;

“relevant land” means—

(a) any land or waters in relation to which the works notice in question requires, or may require, works or operations to be carried out; or

(b) any land adjoining or adjacent to that land or those waters;

“works notice” means a works notice under section 161A above.

### **161C Appeals against works notices.**

(1) A person on whom a works notice is served may, within the period of twenty-one days beginning with the day on which the notice is served, appeal against the notice to the Secretary of State.

(2) On any appeal under this section the Secretary of State—

(a) shall quash the notice, if he is satisfied that there is a material defect in the notice; but

(b) subject to that, may confirm the notice, with or without modification, or quash it.

(3) The Secretary of State may by regulations make provision with respect to—

(a) the grounds on which appeals under this section may be made; or

(b) the procedure on any such appeal.

(4) Regulations under subsection (3) above may (among other things)—

(a) include provisions comparable to those in section 290 of the <sup>M8</sup>Public Health Act 1936 (appeals against notices requiring the execution of works);

(b) prescribe the cases in which a works notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;

(c) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the works notice against which he is appealing;

(d) prescribe the cases in which the appellant may claim that a works notice should have been served on some other person and prescribe the procedure to be followed in those cases;

(e) make provision as respects—

(i) the particulars to be included in the notice of appeal;

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- (ii) the persons on whom notice of appeal is to be served and the particulars, if any, which are to accompany the notice; or
- (iii) the abandonment of an appeal.

- (5) In this section “works notice” means a works notice under section 161A above.
- (6) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals).

#### **161D Consequences of not complying with a works notice.**

- (1) If a person on whom the Agency serves a works notice fails to comply with any of the requirements of the notice, he shall be guilty of an offence.
- (2) A person who commits an offence under subsection (1) above shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000 or to both;
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.
- (3) If a person on whom a works notice has been served fails to comply with any of the requirements of the notice, the Agency may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by the Agency in doing it.
- (4) If the Agency is of the opinion that proceedings for an offence under subsection (1) above would afford an ineffectual remedy against a person who has failed to comply with the requirements of a works notice, the Agency may take proceedings in the High Court for the purpose of securing compliance with the notice.
- (5) In this section “works notice” means a works notice under section 161A above.”

#### **Commencement Information**

- I4** Sch. 22 para. 162 wholly in force at 29.4.1999; Sch. 22 para. 162 not in force at Royal Assent see s. 125(3); Sch. 22 para. 162 in force for specified purposes at 21.9.1995 by [S.I. 1995/1983](#), [art. 3](#); Sch. 22 para. 162 in force for further specified purposes at 16.3.1999 by [S.I. 1999/803](#), [art. 2](#); Sch. 22 para. 162 in force at 29.4.1999 insofar as not already in force by [S.I. 1999/1301](#), [art. 2](#)

#### **Marginal Citations**

- M6** 1954 c. 70.  
**M7** 1990 c. 43.  
**M8** 1936 c. 49.

163 In section 162 of that Act (other powers to deal with foul water or pollution) in subsection (1) (which refers to section 161 of that Act) for the words “section 161” there shall be substituted the words “sections 161 to 161D”.

164 In section 166 of that Act (power to carry out works for purposes of flood warning system) in subsection (1) (which is expressed to be without prejudice to the

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Agency’s other powers by virtue of section 4) for the words “section 4 above” there shall be substituted the words “section 37 of the 1995 Act (incidental general powers of the Agency)”.

165 In section 169 of that Act (powers of entry for enforcement purposes) at the beginning of subsection (3) there shall be inserted the words “Subject to subsection (4) below,” and after that subsection there shall be added—

“(4) The powers conferred by this section shall not have effect for the purposes of any of the Agency’s pollution control functions, within the meaning of section 108 of the 1995 Act.”

166 In section 172 of that Act (powers of entry for other purposes) at the beginning of subsection (3) there shall be inserted the words “Subject to subsection (3A) below,” and after that subsection there shall be added—

“(3A) The powers conferred by this section shall not have effect for the purposes of any of the Agency’s pollution control functions, within the meaning of section 108 of the 1995 Act.”

167 In section 174 of that Act (impersonation of persons exercising powers of entry) in subsection (1) (which creates a summary offence punishable by a fine not exceeding level 4) for the words from “liable, on summary conviction,” onwards there shall be substituted the words “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.”

168 Section 187 of that Act (annual report of the Authority) shall cease to have effect.

169 (1) Section 190 of that Act (pollution control register) shall be amended in accordance with the following provisions of this paragraph.

(2) In subsection (1) (which requires a register to be kept containing prescribed particulars of the items there specified) after the words “prescribed particulars of” there shall be inserted the words “or relating to”.

(3) Paragraph (d) of that subsection (which relates to certificates under paragraph 1(7) of Schedule 10) shall be omitted.

(4) Paragraph (f) of that subsection, and the word “and” immediately preceding it, shall be omitted and at the end of that subsection there shall be added—

- “(g) applications made to the Agency for the variation of discharge consents;
- (h) enforcement notices served under section 90B above;
- (j) revocations, under paragraph 7 of Schedule 10 to this Act, of discharge consents;
- (k) appeals under section 91 above;
- (l) directions given by the Secretary of State in relation to the Agency’s functions under the water pollution provisions of this Act;
- (m) convictions, for offences under Part III of this Act, of persons who have the benefit of discharge consents;
- (n) information obtained or furnished in pursuance of conditions of discharge consents;



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- (o) works notices under section 161A above;
- (p) appeals under section 161C above;
- (q) convictions for offences under section 161D above;
- (r) such other matters relating to the quality of water or the pollution of water as may be prescribed by the Secretary of State.

(1A) Where information of any description is excluded from any register by virtue of section 191B below, a statement shall be entered in the register indicating the existence of information of that description.”

(5) In subsection (2) (registers to be available for inspection by, and facilities for obtaining copies of entries to be afforded to, the public) after paragraph (b) there shall be added the words— “ and, for the purposes of this subsection, places may be prescribed by the Secretary of State at which any such registers or facilities as are mentioned in paragraph (a) or (b) above are to be available or afforded to the public in pursuance of the paragraph in question. ”

(6) After subsection (3) there shall be added—

“(4) The Secretary of State may give to the Agency directions requiring the removal from any register maintained by it under this section of any specified information which is not prescribed for inclusion under subsection (1) above or which, by virtue of section 191A or 191B below, ought to have been excluded from the register.

(5) In this section “discharge consent” has the same meaning as in section 91 above.”

#### Commencement Information

**I5** Sch. 22 para. 169 wholly in force at 31.12.1996; Sch. 22 para. 169 not in force at Royal Assent see s. 125(3); Sch. 22 para. 169 in force for specified purposes at 21.11.1996 by [S.I. 1996/2909](#), [art. 2](#) (with [art. 4](#)); Sch. 22 para. 169 in force at 31.12.1996 insofar as not already in force by [S.I. 1996/2909](#), [art. 3](#) (subject to [art. 4](#))

170 After section 191 of that Act (register for the purposes of works discharges) there shall be inserted—

#### “191A Exclusion from registers of information affecting national security.

(1) No information shall be included in a register kept or maintained by the Agency under any provision of this Act if and so long as, in the opinion of the Secretary of State, the inclusion in such a register of that information, or information of that description, would be contrary to the interests of national security.

(2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which subsection (1) above applies, give to the Agency directions—

- (a) specifying information, or descriptions of information, to be excluded from their registers; or
- (b) specifying descriptions of information to be referred to the Secretary of State for his determination;

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and no information referred to the Secretary of State in pursuance of paragraph (b) above shall be included in any such register until the Secretary of State determines that it should be so included.

- (3) The Agency shall notify the Secretary of State of any information it excludes from a register in pursuance of directions under subsection (2) above.
- (4) A person may, as respects any information which appears to him to be information to which subsection (1) above may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—
  - (a) he shall notify the Agency that he has done so; and
  - (b) no information so notified to the Secretary of State shall be included in any such register until the Secretary of State has determined that it should be so included.

#### **191B Exclusion from registers of certain confidential information.**

- (1) No information relating to the affairs of any individual or business shall, without the consent of that individual or the person for the time being carrying on that business, be included in a register kept or maintained by the Agency under any provision of this Act, if and so long as the information—
  - (a) is, in relation to him, commercially confidential; and
  - (b) is not required to be included in the register in pursuance of directions under subsection (7) below;

but information is not commercially confidential for the purposes of this section unless it is determined under this section to be so by the Agency or, on appeal, by the Secretary of State.

- (2) Where information is furnished to the Agency for the purpose of—
  - (a) an application for a discharge consent or for the variation of a discharge consent,
  - (b) complying with any condition of a discharge consent, or
  - (c) complying with a notice under section 202 below,

then, if the person furnishing it applies to the Agency to have the information excluded from any register kept or maintained by the Agency under any provision of this Act, on the ground that it is commercially confidential (as regards himself or another person), the Agency shall determine whether the information is or is not commercially confidential.

- (3) A determination under subsection (2) above must be made within the period of fourteen days beginning with the date of the application and if the Agency fails to make a determination within that period it shall be treated as having determined that the information is commercially confidential.
- (4) Where it appears to the Agency that any information (other than information furnished in circumstances within subsection (2) above) which has been obtained by the Agency under or by virtue of any provision of any enactment might be commercially confidential, the Agency shall—
  - (a) give to the person to whom or whose business it relates notice that that information is required to be included in a register kept or

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- maintained by the Agency under any provision of this Act, unless excluded under this section; and
- (b) give him a reasonable opportunity—
- (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and
- (ii) of making representations to the Agency for the purpose of justifying any such objection;
- and, if any representations are made, the Agency shall, having taken the representations into account, determine whether the information is or is not commercially confidential.
- (5) Where, under subsection (2) or (4) above, the Agency determines that information is not commercially confidential—
- (a) the information shall not be entered on the register until the end of the period of twenty-one days beginning with the date on which the determination is notified to the person concerned; and
- (b) that person may appeal to the Secretary of State against the decision; and, where an appeal is brought in respect of any information, the information shall not be entered on the register until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn.
- (6) Subsections (2A), (2C) and (2K) of section 91 above shall apply in relation to appeals under subsection (5) above; but—
- (a) subsection (2C) of that section shall have effect for the purposes of this subsection with the substitution for the words from “(which may” onwards of the words “(which must be held in private)”; and
- (b) subsection (5) above is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).
- (7) The Secretary of State may give to the Agency directions as to specified information, or descriptions of information, which the public interest requires to be included in registers kept or maintained by the Agency under any provision of this Act notwithstanding that the information may be commercially confidential.
- (8) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this section at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the Agency for the information to remain excluded from the register on the ground that it is still commercially confidential and the Agency shall determine whether or not that is the case.
- (9) Subsections (5) and (6) above shall apply in relation to a determination under subsection (8) above as they apply in relation to a determination under subsection (2) or (4) above.
- (10) The Secretary of State may by regulations substitute (whether in all cases or in such classes or descriptions of case as may be specified in the regulations) for the period for the time being specified in subsection (3) above such other period as he considers appropriate.

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- (11) Information is, for the purposes of any determination under this section, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.
- (12) In this section “discharge consent” has the same meaning as in section 91 above.”

#### Commencement Information

**I6** Sch. 22 para. 170 wholly in force at 31.12.1996; Sch. 22 para. 170 not in force at Royal Assent see s. 125(3); Sch. 22 para. 170 in force for specified purposes at 21.11.1996 by [S.I. 1996/2909, art. 2](#) (with [art. 4](#)); Sch. 22 para. 170 in force at 31.12.1996 insofar as not already in force by [S.I. 1996/2909, art. 3](#) (subject to [art. 4](#))

- 171 Section 196 of that Act (provision of information by the Authority to Ministers) shall cease to have effect.
- 172 (1) In section 202 of that Act (information and assistance required in connection with the control of pollution) in subsection (4) (which creates a summary offence punishable by a fine not exceeding level 5 on the standard scale) for the words from “liable, on summary conviction,” onwards there shall be substituted the words “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.”
- (2) Subsection (5) of that section (which is superseded in consequence of the amendment made by sub-paragraph (1) above) shall cease to have effect.
- 173 (1) Section 204 of that Act (restriction on disclosure of information with respect to any particular business) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (2)(a) (exception for disclosure of information for purposes of functions under certain enactments)—
- (a) for the words “the Authority” there shall be substituted the words “the Agency, the Scottish Environment Protection Agency”; and
  - (b) for the words “or the Water Act 1989” there shall be substituted the words “, the <sup>M9</sup>Water Act 1989, Part I or IIA of the <sup>M10</sup>Environmental Protection Act 1990 or the 1995 Act”.
- (3) In subsection (3), in paragraph (a) (which provides that nothing in subsection (1) shall limit the matters which may be included in reports made by specified bodies under specified enactments)—
- (a) after sub-paragraph (i), there shall be inserted—
    - “(ia) the Scottish Environment Protection Agency;”; and
  - (b) for the words “or that Act of 1991” there shall be substituted the words “, Part I or IIA of the <sup>M11</sup>Environmental Protection Act 1990, that Act of 1991 or the 1995 Act”.
- (4) In paragraph (b) of that subsection, after the words “that Act” there shall be inserted the words “of 1991”.

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#### Marginal Citations

**M9** 1989 c. 15.

**M10** 1989 c. 15.

**M11** 1990 c. 43.

- 174 Sections 213 to 215 of that Act (local inquiries) shall cease to have effect.
- 175 Section 218 of that Act (no judicial disqualification by virtue of liability to pay charges to the Authority) shall cease to have effect.
- 176 In section 219 of that Act (powers to make regulations)—
- (a) in subsection (2), the words “Subject to subsection (3) below,”, and
  - (b) subsection (3) (which restricts certain powers to make regulations),
- shall cease to have effect.
- 177 (1) Section 221(1) of that Act (general interpretation) shall be amended in accordance with the following provisions of this paragraph.
- (2) Before the definition of “abstraction” there shall be inserted—  
““the 1995 Act” means the Environment Act 1995;”.
  - (3) After the definition of “accessories” there shall be inserted—  
““the Agency” means the Environment Agency;”.
  - (4) The definition of “the Authority” shall be omitted.
  - (5) The definition of “constituent council” shall be omitted.
  - (6) After the definition of “enactment” there shall be inserted—  
““enforcement notice” has the meaning given by section 90B above;”.
  - (7) For the definition of “flood defence functions” there shall be substituted—  
““flood defence functions”, in relation to the Agency, means—
    - (a) its functions with respect to flood defence and land drainage by virtue of Part IV of this Act, the <sup>M12</sup>Land Drainage Act 1991 and section 6 of the 1995 Act;
    - (b) those functions transferred to the Agency by section 2(1)(a) (iii) of the 1995 Act which were previously transferred to the Authority by virtue of section 136(8) of the <sup>M13</sup>Water Act 1989 and paragraph 1(3) of Schedule 15 to that Act (transfer of land drainage functions under local statutory provisions and subordinate legislation); and
    - (c) any other functions of the Agency under any of the flood defence provisions of this Act;”.
  - (8) For the definition of “flood defence provisions” there shall be substituted—  
““flood defence provisions”, in relation to this Act, means—
    - (a) any of the following provisions of this Act, that is to say—
      - (i) Part IV;

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- (ii) sections 133 to 141 (including Schedule 15), 143, 147 to 149, 155, 165 to 167, 180, 193, 194 and paragraph 5 of Schedule 25;
  - (b) any of the following provisions of the 1995 Act, that is to say—
    - (i) section 6(4) (general supervision of flood defence);
    - (ii) section 53 (inquiries and other hearings); and
    - (iii) Schedule 5 (membership and proceedings of regional and local flood defence committees); and
  - (c) any other provision of this Act or the 1995 Act so far as it relates to a provision falling within paragraph (a) or (b) above;”.
- (9) For the definition of “the related water resources provisions” there shall be substituted—
- ““the related water resources provisions”, in relation to Chapter II of Part II of this Act, means—
- (a) the following provisions of this Act, that is to say, the provisions—
    - (i) of sections 21 to 23 (including Schedule 5);
    - (ii) of sections 120, 125 to 130, 158, 189, 199 to 201, 206(3), 209(3), 211(1) and 216; and
    - (iii) of paragraph 1 of Schedule 25; and
  - (b) the following provisions of the 1995 Act, that is to say, the provisions—
    - (i) of sections 41 and 42 (charging schemes) as they have effect by virtue of subsection (1)(a) of section 41 (licences under Chapter II of Part II of this Act); and
    - (ii) of subsections (1) and (2) of section 53 (inquiries and other hearings);”.
- (10) In the definition of “water pollution provisions”—
- (a) in paragraph (b)—
    - (i) after the words “161” there shall be inserted the words “to 161D”; and
    - (ii) for the words “203 and 213(2) above” there shall be substituted the words “and 203”; and
  - (b) after paragraph (c), there shall be added the words— “ and the following provisions of the 1995 Act, that is to say, the provisions of subsections (1) and (2) of section 53. ”

#### Marginal Citations

**M12** 1991 c. 59.

**M13** 1989 c. 15.

- 178 Schedule 1 to that Act (the National Rivers Authority) shall cease to have effect.
- 179 Schedules 3 and 4 to that Act (boundaries of regional flood defence areas and membership and proceedings of regional and local flood defence committees) shall cease to have effect.

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- 180 In Schedule 5 to that Act (procedure relating to statements on minimum acceptable flow) in paragraph 2(3)(g) (copy of notice to be served on person authorised by a licence under Part I of the <sup>M14</sup>Electricity Act 1989 to generate electricity) after the words “to generate electricity” there shall be added the words “who has a right to abstract water from any such waters or related inland waters”.

**Marginal Citations**

**M14** 1989 c. 29.

- 181 In Schedule 6 to that Act (orders providing for exemption from restrictions on abstraction) in paragraph 1(4)(h) (copy of notice to be served on person authorised by a licence under Part I of the Electricity Act 1989 to generate electricity) after the words “to generate electricity” there shall be added the words “who has a right to abstract water from any such source of supply or related inland waters”.
- 182 In Schedule 10 to that Act (discharge consents) after paragraph 7 (restriction on variation and revocation of consent and previous variation) there shall be added—

*“ General review of consents*

- 8 (1) If it appears appropriate to the Secretary of State to do so he may at any time direct the Authority to review—
- (a) the consents given under paragraphs 2 and 5 above, or
  - (b) any description of such consents,
- and the conditions (if any) to which those consents are subject.
- (2) A direction given by virtue of sub-paragraph (1) above—
- (a) shall specify the purpose for which, and
  - (b) may specify the manner in which,
- the review is to be conducted.
- (3) After carrying out a review pursuant to a direction given by virtue of sub-paragraph (1) above, the Authority 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 Authority under sub-paragraph (3) above in relation to any consent he may, if it appears appropriate to him to do so, direct the Authority to do, in relation to that consent, anything mentioned in paragraph 6(2)(b) or (c) above.
- (5) A direction given by virtue of sub-paragraph (4) above may only direct the Authority to do, in relation to any consent,—
- (a) any such thing as the Authority 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.”

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183 For that Schedule there shall be substituted—

## “SCHEDULE 10

### DISCHARGE CONSENTS

#### *Application for consent*

- 1 (1) An application for a consent, for the purposes of section 88(1)(a) of this Act, for any discharges—
  - (a) shall be made to the Agency on a form provided for the purpose by the Agency; and
  - (b) must be advertised by or on behalf of the applicant in such manner as may be required by regulations made by the Secretary of State.
- (2) Regulations made by the Secretary of State may make provision for enabling the Agency to direct or determine that any such advertising of an application as is required under sub-paragraph (1)(b) above may, in any case, be dispensed with if, in that case, it appears to the Agency to be appropriate for that advertising to be dispensed with.
- (3) The applicant for such a consent must provide to the Agency, either on, or together with, the form mentioned in sub-paragraph (1) above—
  - (a) such information as the Agency may reasonably require; and
  - (b) such information as may be prescribed for the purpose by the Secretary of State;

but, subject to paragraph 3(3) below and without prejudice to the effect (if any) of any other contravention of the requirements of this Schedule in relation to an application under this paragraph, a failure to provide information in pursuance of this sub-paragraph shall not invalidate an application.
- (4) The Agency may give the applicant notice requiring him to provide it with such further information of any description specified in the notice as it may require for the purpose of determining the application.
- (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.

#### *Consultation in connection with applications*

- 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.



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- (4) For the purposes of sub-paragraph (1) above—
- (a) persons are prescribed to be consulted on any description of application if they are persons specified for the purposes of applications of that description in regulations made by the Secretary of State;
  - (b) persons are directed to be consulted on any particular application if the Secretary of State specifies them in a direction given to the Agency;
- and the “specified period for notification” is the period specified in the regulations or in the direction.
- (5) Any representations made by any other persons within the period allowed shall also be considered by the Agency in determining the application.
- (6) Subject to sub-paragraph (7) below, the period allowed for making representations is—
- (a) in the case of persons prescribed or directed to be consulted, the period of six weeks beginning with the date on which notice of the application was given under sub-paragraph (1) above, and
  - (b) in the case of other persons, the period of six weeks beginning with the date on which the making of the application was advertised in pursuance of paragraph 1(1)(b) above.
- (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.

#### *Consideration and determination of applications*

- 3 (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—

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- (a) as to the places at which the discharges to which the consent relates may be made and as to the design and construction of any outlets for the discharges;
- (b) as to the nature, origin, composition, temperature, volume and rate of the discharges and as to the periods during which the discharges may be made;
- (c) as to the steps to be taken, in relation to the discharges or by way of subjecting any substance likely to affect the description of matter discharged to treatment or any other process, for minimising the polluting effects of the discharges on any controlled waters;
- (d) as to the provision of facilities for taking samples of the matter discharged and, in particular, as to the provision, maintenance and use of manholes, inspection chambers, observation wells and boreholes in connection with the discharges;
- (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.

- 4 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.

*Reference to Secretary of State of certain applications for consent*

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

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

#### *Consents without applications*

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

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- (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.

*Revocation of consents and alteration and imposition of conditions*

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

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- (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.

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

- 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 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.

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### *General review of consents*

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

### *Applications for variation*

- 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.

### *Transfer of consents*

- 11 (1) A consent under paragraph 3 or 6 above may be transferred by the holder to a person who proposes to carry on the discharges in place of the holder.
- (2) On the death of the holder of a consent under paragraph 3 or 6 above, the consent shall, subject to sub-paragraph (4) below, be regarded as property forming part of the deceased's personal estate, whether or not it would be

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so regarded apart from this sub-paragraph, and shall accordingly vest in his personal representatives.

- (3) If a bankruptcy order is made against the holder of a consent under paragraph 3 or 6 above, the consent shall, subject to sub-paragraph (4) below, be regarded for the purposes of any of the Second Group of Parts of the <sup>M15</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.
- (4) Notwithstanding anything in the foregoing provisions of this paragraph, a consent under paragraph 3 or 6 above (and the obligations arising out of, or incidental to, such a consent) shall not be capable of being disclaimed.
- (5) A consent under paragraph 3 or 6 above which is transferred to, or which vests in, a person under this section shall have effect on and after the date of the transfer or vesting as if it had been granted to that person under paragraph 3 or 6 above, subject to the same conditions as were attached to it immediately before that date.
- (6) Where a consent under paragraph 3 or 6 above is transferred under sub-paragraph (1) above, the person from whom it is transferred shall give notice of that fact to the Agency not later than the end of the period of twenty-one days beginning with the date of the transfer.
- (7) Where a consent under paragraph 3 or 6 above vests in any person as mentioned in sub-paragraph (2) or (3) above, that person shall give notice of that fact to the Agency not later than the end of the period of fifteen months beginning with the date of the vesting.
- (8) If—
  - (a) a consent under paragraph 3 or 6 above vests in any person as mentioned in sub-paragraph (2) or (3) above, but
  - (b) that person fails to give the notice required by sub-paragraph (7) above within the period there mentioned,the consent, to the extent that it permits the making of any discharges, shall cease to have effect.
- (9) A person who fails to give a notice which he is required by sub-paragraph (6) or (7) above to give shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.”

#### Commencement Information

- I7** Sch. 22 para. 183 wholly in force at 31.12.1996; Sch. 22 para. 183 not in force at Royal Assent see s. 125(3); Sch. 22 para. 183 in force for specified purposes at 21.11.1996 by [S.I. 1996/2909, art. 2](#) (with [art. 4](#)); Sch. 22 para. 183 in force at 31.12.1996 insofar as not already in force by [S.I. 1996/2909, art. 3](#) (subject to [art. 4](#))

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### Marginal Citations

**M15** 1986 c. 45.

- 184 In Schedule 11 to that Act (water protection zone orders) in paragraph 4 (which is expressed to be without prejudice to section 213 of that Act) for the words “section 213 of this Act” there shall be substituted the words “section 53 of the 1995 Act (inquiries and other hearings)”.
- 185 In Schedule 12 to that Act (nitrate sensitive area orders) in paragraph 6 (which is expressed to be without prejudice to section 213 of that Act) for the words “section 213 of this Act” there shall be substituted the words “section 53 of the 1995 Act (inquiries and other hearings)”.

PROSPECTIVE

<sup>F1</sup>186 .....

### Textual Amendments

**F1** Sch. 22 para. 186 repealed (E.W.) (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), **Sch. 28** (with reg. 1(2), Sch. 4)

- 187 (1) In Schedule 15 to that Act (supplemental provisions with respect to drainage charges) in paragraphs 4(3) and 9(4) (which specify the penalty for certain offences of failing, and after conviction continuing, without reasonable excuse, to comply with notices) after the words “he continues without reasonable excuse” there shall be inserted the words “to fail”.
- (2) In paragraph 12(2) of that Schedule (which is expressed to be without prejudice to powers by virtue of section 4 or paragraph 5 of Schedule 1) for the words “section 4 of this Act and paragraph 5 of Schedule 1 to this Act” there shall be substituted the words “section 37 of, and paragraph 6 of Schedule 1 to, the 1995 Act”.

### Commencement Information

**I8** Sch. 22 para. 187 wholly in force at 1.4.1996; Sch. 22 para. 187 not in force at Royal Assent see s. 125(3); Sch. 22 para. 187(1) in force at 21.9.1995 by [S.I. 1995/1983](#), **art. 3**; Sch. 22 para. 187(2) in force at 1.4.1996 by [S.I. 1996/186](#), **art. 3**

- 188 In Schedule 20 to that Act (supplemental provisions with respect to powers of entry) in paragraph 7 (which creates an offence of obstruction, punishable on summary conviction by a fine not exceeding level 3) for the words from “liable, on summary conviction,” onwards there shall be substituted the words “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.”
- 189 In Schedule 22 to that Act (protection for particular undertakings) in paragraph 5 (protection for telecommunication systems) for the words “section 4(1) of this Act” there shall be substituted the words “section 37 of the 1995 Act”.



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- 190        In Schedule 25 to that Act (byelaw-making powers) in paragraph 1(1), for the words “paragraphs (a), (c) and (d) of section 2(1) of this Act” there shall be substituted the words “sub-paragraphs (i), (iii) and (v) of section 2(1)(a) of the 1995 Act”.

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