

Status: Point in time view as at 16/05/2017. This version of this cross heading contains provisions that are prospective.

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SCHEDULES

SCHEDULE 22

MINOR AND CONSEQUENTIAL AMENDMENTS

The Water Resources Act 1991

- 128 Subject to the other provisions of this Act, in the ^{M1}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.

^{F1}129

Textual Amendments

F1 Sch. 22 para. 129 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 13](#)

- 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, ”.

^{F2}131

Textual Amendments

F2 Sch. 22 para. 131 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 13](#)

- 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 ^{M2}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- (2) In subsection (4)(b) of that section (which refers to certain enactments which are repealed, but whose effect is reproduced, by this Act) for the words “sections 2(2),

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16 and 17 above” there shall be substituted the words “ sections 6(1), 7 and 8 of the 1995 Act ”.

Commencement Information

I1 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.

^{F3}136

Textual Amendments

F3 Sch. 22 paras. 136-138 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\), Sch. 1 Pt. 13](#)

^{F3}137

Textual Amendments

F3 Sch. 22 paras. 136-138 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\), Sch. 1 Pt. 13](#)

^{F3}138

Textual Amendments

F3 Sch. 22 paras. 136-138 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\), Sch. 1 Pt. 13](#)

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- 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)—
- (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,

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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
 - (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—

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- (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 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”.

^{F4}142

Textual Amendments

F4 Sch. 22 para. 142 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)

^{F5}143

Textual Amendments

F5 Sch. 22 para. 143 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)

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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F⁶146

Textual Amendments
F6 Sch. 22 para. 146 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 13](#)

- 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.”

F⁷148

Textual Amendments
F7 Sch. 22 para. 148 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 13](#)

F⁸149

Textual Amendments
F8 Sch. 22 para. 149 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 13](#)

- 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 ^{M3}Water Resources Act 1963 had not been passed) there shall be substituted—

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“(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”.

Marginal Citations

M3 1963 c. 38.

F⁹152

Textual Amendments

F9 Sch. 22 paras. 152-156 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 13

F⁹153

Textual Amendments

F9 Sch. 22 paras. 152-156 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 13

F⁹154

Textual Amendments

F9 Sch. 22 paras. 152-156 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 13

F⁹155

Textual Amendments

F9 Sch. 22 paras. 152-156 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 13

F⁹156

Textual Amendments

F9 Sch. 22 paras. 152-156 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 13

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- 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 ^{M4}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 ^{M5}Water Act 1989, 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)”.

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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.

(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

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- (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.
- (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.

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(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 ^{M6}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 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 ^{M7}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.

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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 ^{M8}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;
 - (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;

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- (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

I2 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 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.”

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- 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.”

F10 168

Textual Amendments

F10 Sch. 22 para. 168 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 13](#)

- 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;
 - (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

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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

I3 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;

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

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- (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 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—

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- (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.
- (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

I4 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

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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)

F11 171

Textual Amendments

F11 Sch. 22 para. 171 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 13

- 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 ^{M9}Water Act 1989, Part I or IIA of the ^{M10}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 ^{M11}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”.

Marginal Citations

- M9 1989 c. 15.
- M10 1989 c. 15.
- M11 1990 c. 43.

F12 174

Status: Point in time view as at 16/05/2017. This version of this cross heading contains provisions that are prospective.
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Textual Amendments

F12 Sch. 22 paras. 174-176 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 13

^{F12}175

Textual Amendments

F12 Sch. 22 paras. 174-176 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 13

^{F12}176

Textual Amendments

F12 Sch. 22 paras. 174-176 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), Sch. 1 Pt. 13

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.

^{F13}(6)

(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 ^{M12}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 ^{M13}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. ”

Textual Amendments

F13 Sch. 22 para. 177(6) 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)

Marginal Citations

M12 1991 c. 59.

M13 1989 c. 15.

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Textual Amendments

F14 Sch. 22 para. 178 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 13](#)

^{F15}179

Textual Amendments

F15 Sch. 22 para. 179 repealed (22.7.2004) by [Statute Law \(Repeals\) Act 2004 \(c. 14\)](#), [Sch. 1 Pt. 13](#)

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 ^{M14}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.

^{F16}181

Textual Amendments

F16 Sch. 22 para. 181 repealed (1.4.2006) by [Water Act 2003 \(c. 37\)](#), s. 105(3), [Sch. 7 para. 15\(3\)](#), [Sch. 9 Pt. 3](#); [S.I. 2006/984](#), art. 2(s)(i)

^{F17}182

Textual Amendments

F17 Sch. 22 para. 182 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)

^{F18}183

Textual Amendments

F18 Sch. 22 para. 183 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)

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)”.

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PROSPECTIVE

F19 186

Textual Amendments

F19 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

I5 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”.
- 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”.

Status:

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Changes to legislation:

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