

SCHEDULE 2

TRANSITIONAL, TRANSITORY AND SAVING PROVISIONS

PART III

TRADE EFFLUENT

Agreements as respects trade premises

16.—(1) Subject to sub-paragraph (2), any agreement made or having effect under Article 32 of the 1973 Order which is in force immediately before the transfer date (not being an agreement which the parties have failed to renew as mentioned in paragraph (6) of that Article) shall continue in force on and after that date notwithstanding the repeal of that Article, but without prejudice and subject to the transfer of rights and liabilities under the agreement in accordance with a scheme made under Article 270 of the 2006 Order.

(2) In the case of any agreement to which sub-paragraph (1) applies—

- (a) it shall have effect on and after the transfer date as if entered into by the sewerage undertaker under Article 187 of the 2006 Order (whether it relates to the reception, treatment or disposal of trade effluent);
- (b) the reference in Article 189(2) (a) of the 2006 Order to an agreement entered into before the transfer date shall be taken to include a reference to it; and
- (c) nothing in Article 188(1) of the 2006 Order shall require the sewerage undertaker to make a reference to DOE under that Article in relation to it.

(3) Where a discharge is lawfully made by an owner or occupier of trade premises under Article 32(7) of the 1973 Order immediately before the transfer date subject to a direction under Article 32(6) of that Order, the terms of such a direction shall have effect (whether or not that direction has taken effect in accordance with its terms, and whether or not the period for appeal against the direction under Article 27(4) of the 1973 Order, as applied with any necessary modifications by virtue of Article 32(6) of that Order has expired before the transfer date) on and after the transfer date as if they were the terms of an agreement entered into on the transfer date between the owner or occupier (as the case may be) and the sewerage undertaker under Article 187 of the 2006 Order (whether the terms of the agreement to which Article 32(6) of that Order applies relate to the reception, treatment or disposal of trade effluent).

(4) An agreement which has effect as mentioned in sub-paragraph (3) following a direction under Article 32(6) of the 1973 Order or under sub-paragraph (5) following an appeal under that sub-paragraph, shall expire—

- (a) at the end of the period of six months beginning on the transfer date; or
- (b) on such earlier date as may be specified in the direction.

(5) Where in relation to any direction under Article 32(6) of the 1973 Order any appeal has been made to the Appeals Commission in accordance with Article 27(4) of the 1973 Order (as applied with any necessary modifications by virtue of Article 32(6)) before the transfer date, and has not been determined before that date, it shall be determined by the Authority on or after that date under Article 180 of the 2006 Order as if—

- (a) the appeal were an appeal under sub-paragraph (c) of paragraph (1) of that Article against any condition attached by the sewerage undertaker to a consent on an application for a consent;
- (b) the reference in Article 180(6) of the 2006 Order to conditions given or imposed by the sewerage undertaker were a reference to conditions agreed by the sewerage undertaker

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and the occupier or owner (as the case may be) in an agreement under Article 187 of the 2006 Order; and

(c) in the application of Article 181 of the 2006 Order to that appeal—

(i) paragraph (1) of that Article were omitted; and

(ii) sub-paragraph (a) of paragraph (2) of that Article were taken to include a case in which the sewerage undertaker in question would have had a duty to make a reference under Article 178 of the 2006 Order had the discharge in question been the subject of a notice under Article 176 of that Order.

(6) If, on an appeal under sub-paragraph (5), it appears to the Authority that the case is one in which the sewerage undertaker in question would have been required to make a reference under Article 188 of the 2006 Order before entering into such an agreement, the Authority shall not be entitled to determine the appeal, otherwise than by upholding a refusal, except where the conditions set out in sub-paragraph (7) are satisfied.

(7) The conditions mentioned in paragraph (6) are satisfied if the Authority—

(a) has itself referred the questions mentioned in Article 188(1) of the 2006 Order to DOE; and

(b) has been sent a copy of the notice of DOE's determination on the reference.

(8) Every reference under sub-paragraph (7)(a) shall be made in writing and shall be accompanied by a copy of the notice containing the application in respect of which the appeal and reference are made.

(9) It shall be the duty of the Authority, on making a reference under sub-paragraph (7)(a), to serve a copy of the reference—

(a) on the occupier of the trade premises in question; and

(b) on the sewerage undertaker in question.

(10) Save as provided in sub-paragraph (3), nothing in this Order or Article 32(7) of the 1973 Order or a scheme made under Article 270 of the 2006 Order shall permit the continuation on or after the transfer date of a discharge in any case where the parties to an agreement made or having effect under Article 32 of the 1973 Order failed to renew the agreement.