

SCHEDULE 2

TRANSITIONAL, TRANSITORY AND SAVING PROVISIONS

PART III

TRADE EFFLUENT

Existing discharges

13.—(1) No discharge of trade effluent from any trade premises into a sewer or waste water treatment works of the sewerage undertaker shall on or after the transfer date be authorised by virtue of Article 29 of the 1973 Order.

(2) Subject to the following provisions of this paragraph

(a) where any discharge of trade effluent from any trade premises into a sewer was authorised by Article 29 of the 1973 Order immediately before the transfer date, a consent shall be deemed to be given under Chapter III of Part VI of the 2006 Order by the sewerage undertaker on the transfer date (referred to in this Part as a “deemed consent”) for the discharge from those premises into that sewer to continue on and after the transfer date, and—

(b) a deemed consent—

(i) shall, subject to paragraph 19, be subject to the same conditions as to charges or otherwise as the discharge to which it relates was subject immediately before the transfer date;

(ii) shall be deemed to include the consent of DOE in relation to any part of the discharge that comprises special category effluent; and

(iii) shall have effect as if it had been granted under that Chapter to the occupier on the transfer date of those premises.

(3) Except where the discharge to which a deemed consent relates is immediately before the transfer date subject to a direction under Article 31 of the 1973 Order (whether or not that direction has taken effect)

(a) the sewerage undertaker may at any time after the transfer date give a direction under Article 182 of the 2006 Order varying the conditions attached to the consent, including any attached by virtue of sub-paragraph (2), as if Article 182(2) did not apply; and

(b) Articles 182(6)(a), 183 and 184 of the 2006 Order shall not apply in relation to any such direction.

(4) A deemed consent—

(a) shall not be transferable, and Article 177 of the 2006 Order shall accordingly not apply in relation to it; and

(b) shall cease to have effect on the expiry of the period of six months commencing on the transfer date, except as provided in sub-paragraph (5).

(5) Where, before the expiry of the period referred to in sub-paragraph (4), the occupier of trade premises has made an application to the sewerage undertaker under Article 176 of the 2006 Order for a consent to discharge trade effluent, being a discharge to which a deemed consent relates, the deemed consent shall cease to have effect-

(a) if the consent is given (whether following a reference to DOE under Article 178 of the 2006 Order in relation to the consent or otherwise), on the date on which it is given (whether

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- or not it is subject to conditions that may be the subject of an appeal under Article 180(1) (c) of the 2006 Order);
- (b) if the consent is refused (whether following a reference to DOE under Article 178 of the 2006 Order in relation to the consent or otherwise)—
- (i) except where (ii) applies, on the expiry of the period of 28 days beginning with the date on which the undertaker refused it; or
 - (ii) where the occupier appeals to the Authority under Article 180(1)(a) of the 2006 Order within such 28 day period, on the date on which the Authority determines the appeal;
- (c) if the occupier appeals to the Authority under Article 180(1)(b) of the 2006 Order in respect of the failure to give the consent, on the date on which the Authority determines the appeal.
- (6) Any dispute between the sewerage undertaker and a person making a discharge as to whether the discharge is one which was authorised by Article 29 of the 1973 Order immediately before the transfer date shall be determined by the county court whose decision in the matter shall be final, except on a point of law.
- (7) Where the discharge to which a deemed consent relates is immediately before the transfer date subject to a direction under Article 31 of the 1973 Order (in this paragraph referred to as a “reviewed discharge”)—
- (a) the reference in Article 182(2) of the 2006 Order to the date of the consent shall be taken as a reference to the date on which that direction (or, if there is more than one such direction, the most recent of them) took effect; and
 - (b) the reference in Article 185(2) of the 2006 Order to a review shall be taken not to include any review conducted before the transfer date by the Department (or any predecessors).
- (8) Where any appeal has been made to the Appeals Commission in accordance with Article 31(5) of the 1973 Order and has not been determined before the transfer date, it shall be determined by the Authority on or after that date in accordance with sub-paragraph (9).
- (9) Any appeal to the Authority under sub-paragraph (8) shall be determined by the Authority under Article 180 of the 2006 Order as if—
- (a) the appeal were made under sub-paragraph (c) of paragraph (1) of that Article against any condition attached by the sewerage undertaker on an application for a consent; and
 - (b) 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 been required 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.
- (10) References in this paragraph to a direction under Article 31 of the 1973 Order include references to a reviewed direction under that Article.

New discharges

14.—(1) Any consent which is effective under Article 22 of the 1973 Order immediately before the transfer date in respect of any trade premises shall have effect on and after that date as if given by the sewerage undertaker to the occupier of the trade premises under Chapter III of Part VI of the 2006 Order and shall, subject to paragraph 19, be subject to the same conditions as to charges or otherwise as those to which it was subject immediately before the transfer date.

(2) In the application of Article 182 of the 2006 Order to any consent which has effect in accordance with sub-paragraph (1) (referred to in this paragraph as a “new consent”)—

- (a) the reference in paragraph (2) of that Article to the date of the consent shall be taken as a reference to the date on which the consent was granted under Article 22 of the 1973 Order; and
 - (b) the reference in that paragraph to a previous direction given under Article 182 of the 2006 Order shall be taken to include a review under Article 27 of the 1973 Order.
- (3) Where any appeal has been made to the Appeals Commission in accordance with Article 27(4) of the 1973 Order and has not been determined before the transfer date, it shall be determined by the Authority on or after that date in accordance with sub-paragraph (4).
- (4) Any appeal to the Authority under sub-paragraph (3) shall be determined by the Authority under Article 180 of the 2006 Order as if—
- (a) the appeal were made under sub-paragraph (c) of paragraph (1) that Article against any condition attached by the sewerage undertaker to a consent on an application for a consent; and
 - (b) 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 been required 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.
- (5) In relation to a new consent, the reference in Article 185(2) of the 2006 Order to a review shall be taken not to include any review conducted before the transfer date by the Department (or any predecessors).

Applications for consent to a new discharge

- 15.—(1) Any application made to the Department in accordance with Article 23 of the 1973 Order by an occupier of trade premises which is outstanding immediately before the transfer date in respect of any premises shall have effect on and after that date as if it were a notice served on the sewerage undertaker for the purposes of Article 176 of the 2006 Order.
- (2) Where an application has effect as a notice by virtue of sub-paragraph (1)—
- (a) the applicant shall within 28 days of the transfer date supplement the application by the provision to the sewerage undertaker of the information mentioned in Article 176(2)(b) and (c) of the 2006 Order; and
 - (b) the periods mentioned in Article 178(2) and Article 180(1)(b) of the 2006 Order shall not begin to run for the purposes of those provisions in their application to such notice until the day after that on which the applicant provides the information so required.
- (3) Where any appeal has been made to the Appeals Commission in accordance with Article 26 of the 1973 Order and has not been determined before the transfer date, it shall be determined by the Authority on or after that date under Article 180 of the 2006 Order as if the appeal were an appeal under sub-paragraph (a) or (c) of paragraph (1) of that Article (as the case may be); and Article 181 of the 2006 Order (except paragraph (1)) shall apply accordingly.
- (4) Where a person has a right to appeal to the Appeals Commission under Article 26 of the 1973 Order within the period of 28 days from the date on which he received an intimation of the decision and before the transfer date—
- (a) that right has not been exercised; and
 - (b) that period has not expired,

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that person may within the said period appeal to the Authority under Article 180 of the 2006 Order as if the appeal were an appeal under sub-paragraph (a) or (c) of paragraph (1) of that Article (as the case may be); and Article 181 of the 2006 Order (except paragraph (1)) shall apply accordingly.

(5) In this paragraph the reference to any application made in accordance with Article 23 of the 1973 Order which is outstanding immediately before the transfer date is a reference to an application for consent under Article 22 made in accordance with Article 23 of that Order which has not been—

- (a) withdrawn by the applicant before the transfer date, or
- (b) refused, or granted subject to conditions, by the Department more than 28 days before that date.

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 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.

Information on appeal and interpretation

17.—(1) On an appeal to which this Part applies in respect of any discharge, the Authority may require the appellant to provide such further information concerning the discharge as an applicant for consent to the discharge would be required to furnish in an application under Article 176 of the 2006 Order.

(2) References in the 2006 Order to a consent under or given under, or an agreement under, Chapter III of Part VI, or to a discharge of trade effluent which is lawfully made by virtue of Chapter III of Part VI, shall be taken to include references to a consent which by virtue of this Part of this Order has effect as if it were given under that Chapter, or as a deemed consent or is a discharge of trade effluent which is lawfully made, as the case may be.

(3) The reference in sub-paragraph (a)(i) of Article 185(2) of the 2006 Order to a consent or variation given or made before the transfer date shall be taken to include a reference to a deemed consent and a new consent (as defined in sub-paragraph (2) of paragraph 13 and sub-paragraph (2) of paragraph 14 respectively).