Control of Pollution Act 1974

1974 CHAPTER 40

PART II

POLLUTION OF WATER

Modifications etc. (not altering text)

C1 Pt. II modified (S.) (19.5.1993) by S.I. 1993/1156, regs. 3, 4, 5, **Sch. 1**
Pt. II (ss. 31-56) modified (1.4.1996) by 1995 c. 25, **s. 33(5)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

C2 Pt. II amended by S.I. 1984/1200, **reg. 2(1)**
Pt. II amended (1.5.1994) by S.I. 1994/1056, reg. 1(3), 19, **Sch. 4 Pt. I para. 11**

C3 Pt. II modified by S.I. 1984/1200, reg. 3, **Sch. 1** and 1985/5, regs. 3(1)(2), 4(1)(a)

C4 Pt. II modified by Channel Tunnel Act 1987 (c. 53, SIF 102), ss. 6, 45, Sch. 2 para. 5(5), **Sch. 7 Pt. VI para. 2**

C5 Functions exercisable under Pt. II by (a) Minister of Agriculture, Fisheries and Food and (b) that Minister and Secretary of State jointly transferred (W.) by S.I. 1978/272, art. 2(1)(3), **Sch. 1**
Pt. II: transfer of functions (12.10.1995) by 1995 c. 25, **s. 21(1)(a)(ii)** (with ss. 7(6), 115, 117); S.I. 1995/2649, **art. 2**

General provisions

[F1 30A Waters to which Part II applies.

(1) This part applies to any waters (in this Part referred to as "controlled waters") of any of the following classes—

(a) relevant territorial waters, that is to say, subject to subsection (5) below, the waters which extend seaward for three miles from the baselines from which the breadth of the territorial sea adjacent to Scotland is measured;

(b) coastal waters, that is to say, any waters which are within the area which extends landward from those baselines as far as the limit of the highest tide or, in the case of the waters of any relevant river or watercourse, as far as the

fresh-water limit of the river or watercourse, together with the waters of any enclosed dock which adjoins waters within that area;

(c) inland waters, that is to say, the waters of any relevant loch or pond or of so much of any relevant river or watercourse as is above the fresh-water limit;

(d) ground waters, that is to say, any waters contained in underground strata, or in—

(i) a well, borehole or similar work sunk into underground strata, including any adit or passage constructed in connection with the well, borehole or work for facilitating the collection of water in the well, borehole or work; or

(ii) any excavation into underground strata where the level of water in the excavation depends wholly or mainly on water entering it from the strata.

(2) The Secretary of State—

(a) shall deposit maps with **[**[F2]SEPA**]]** showing what appear to him to be the fresh-water limits of every relevant river or watercourse . . . [F3]; and

(b) may from time to time, if he considers it appropriate to do so by reason of any change of what appears to him to be the fresh-water limit of any river or watercourse, deposit a map showing a revised limit for that river or watercourse;

and in subsection (1) above "fresh-water limit", in relation to any river or watercourse, means the place for the time being shown as the fresh-water limit of that river or watercourse in the latest map deposited for that river or watercourse under this subsection.

(3) It shall be the duty of **[**[F2]SEPA**]** to keep any maps deposited with it under subsection (2) above available, at all reasonable times, for inspection by the public free of charge.

(4) In this section—

"miles" means international nautical miles of 1,852 metres;

"loch or pond" includes a reservoir of any description;

"relevant loch or pond" means (subject to subsection (5) below) any loch or pond which (whether it is natural or artificial or above or below ground) discharges into a relevant river or watercourse or into another loch or pond which is itself a relevant loch or pond;

"relevant river or watercourse" means any river or watercourse (including an underground river or watercourse and an artificial river or watercourse) which is neither a public sewer nor a sewer or drain which drains into a public sewer.

(5) The Secretary of State may by order provide—

(a) that any area of the territorial sea adjacent to Scotland is to be treated as if it were an area of relevant territorial waters for the purposes of this Part;

(b) that any loch or pond which does not discharge into a relevant river or watercourse or into a relevant loch or pond is to be treated for those purposes as a relevant loch or pond.

(6) The power of the Secretary of State to make an order under subsection (5) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and such an order may—

(a) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate; and

(b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities.

Textual Amendments

F1 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

F2 Words in s. 30A(2)(a) and (3) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F3 Words in s. 30A(2)(a) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C6 S. 30A extended (2.12.1991) by S.I. 1991/2539, reg. 3, **Sch.**
S. 30A amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. II para. 16** (with ss. 42, 46)

C7 S. 30A(1)(c) modified (6.1.1997) by S.I. 1996/3047, **reg. 15(1)**

[F4 30B Classification of quality waters.

(1) The Secretary of State may, in relation to any description of controlled waters (being a description applying to some or all of the waters of a particular class or of two or more different classes), by regulations prescribe a system of classifying the quality of those waters according to criteria specified in the regulations.

(2) The criteria specified in regulations under this section in relation to any classification shall consist of one or more of the following, that is to say—

(a) general requirements as to the purposes for which the waters to which the classification is applied are to be suitable;

(b) specific requirements as to the substances that are to be present in or absent from the water and as to the concentrations of substances which are or are required to be present in the water;

(c) specific requirements as to other characteristics of those waters;

and, for the purposes of any such classification, regulations under this section may provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed.**]**

Textual Amendments

F4 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

Modifications etc. (not altering text)

C8 S. 30B extended (2.12.1991) by S.I. 1991/2539, reg. 3, **Sch.**
S. 30B amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. II para. 16** (with ss. 42, 46)

[[F5]30C Water quality objectives.

(1) For the purpose of maintaining and improving the quality of controlled waters the Secretary of State may, by serving a notice on **[**[F6]SEPA**]]** specifying—

(a) one or more of the classifications for the time being prescribed under section 30B above; and

(b) in relation to each specified classification, a date,

establish the water quality objectives for any waters. . . [F7]which are, or are included in, waters of a description prescribed for the purposes of that section.

(2) The water quality objectives for any waters to which a notice under this section relates shall be the satisfaction by those waters, on and at all times after each date specified in the notice, of the requirements which at the time of the notice were the requirements for the classification in relation to which that date is so specified.

(3) Where the Secretary of State has established water quality objectives under this section for any waters he may review objectives for those waters if—

(a) five years or more have elapsed since the service of the last notice under subsection (1) or (6) of this section to be served in respect of those waters; or

(b) **[**[F8]SEPA**]**, after consultation with such persons as it considers appropriate, requests a review;

and the Secretary of State shall not exercise his power to establish objectives for any waters by varying the existing objectives for those waters except in consequence of such a review.

(4) Where the Secretary of State proposes to exercise his power under this section to establish or vary the objectives for any waters. . . [F9]he shall—

(a) give notice to **[**[F10]SEPA**]** setting out his proposal and specifying the period (not being less than three months from the date of publication of the notice) within which representations with respect to the proposal may be made; and

(b) consider any representations which are duly made;

and if he decides, after considering any such representations, to exercise his power to establish or vary those objectives, he may do so either in accordance with the proposal contained in the notice or in accordance with that proposal as modified in such manner as he considers appropriate.

(5) A notice under subsection (4) above shall be given—

(a) by publishing the notice in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by it; and

(b) by serving a copy of the notice on **[**[F11]SEPA**]**.

(6) If, on a review under this section or in consequence of any representations made following such a review for the purposes of subsection (4) above, the Secretary of State decides that the water quality objectives for any waters [F12] . should remain unchanged, he shall serve notice of that decision on **[**[F13]SEPA**]**.

Textual Amendments

F5 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15,

SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

F6 Words in s. 30C(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(1)(2)** (with ss. 7(6),115, 117); S.I. 1996/186, **art. 3**

F7 Words in s. 30C(1) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(4)(a), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F8 Words substituted in s. 30C(3)(b) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(4)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F9 Words in s. 30C(4) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(4)(c)(i), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F10 Words in s. 30C(4)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(4)(c)(ii)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F11 Words in s. 30C(5)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(4)(d)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F12 Words in s. 30C(6) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(4)(e)(i), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F13 Words in s. 30C(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(4)(e)(ii)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C9 S. 30C amended (9.8.1991) by S.I. 1991/1609, **reg. 3(a)**
S. 30C amended (1.4.1992) by S.I. 1992/574, **reg. 4(a)**

C10 S. 30C modified (9.8.1992) by S.I. 1991/1609, **reg. 3(b)**
S. 30C modified (1.4.1992) by S.I. 1992/574, **reg. 4(b)**
S. 30C modified (6.1.1997) by S.I. 1996/3047, **reg. 15(2)**
S. 30C modified (18.11.1997) by 1997/2470, reg. 6
S, 30C modified (18.11.1997) by S.I. 1997/2471, **reg. 6**
S. 30C modified (1.4.1998) by S.I. 1998/250, **reg. 5**
S. 30C modified (1.7.1998) by S.I. 1998/1344, **reg. 5**

C11 S. 30C(4)(5) excluded by S.I. 1990/126, **reg. 4**
S. 30C(4)(5) omitted (to the extent specified in S.I. 1992/574, **reg. 4(b)**) (1.4.1992) by virtue of S.I. 1992/574, **reg. 4(b)**.

[[F14]30D General duties to achieve and maintain objectives etc.

(1) It shall be the duty of the Secretary of State and of **[**[F15]SEPA**]]** to exercise the powers conferred on him or it by or under the following provisions of this Part or the provisions of the Rivers (Prevention of Pollution) (Scotland) Acts 1951 and 1965 **[**[F16]and of the Environmental Protection Act 1990**]** in such manner as ensures, so far as it is practicable by the exercise of those powers to do so, that the water quality objectives specified for any waters in a notice under section 30C above, or in a notice under **[**[F17]section 83 of the Water Resources Act 1991**]**, are achieved at all times.

(2) It shall be the duty of **[**[F15]SEPA**]**, for the purposes of the carrying out of its functions under the following provisions of this Part or the provisions of the Rivers (Prevention of Pollution) (Scotland) Acts 1951 and 1965, to monitor the extent of pollution in controlled waters.

Textual Amendments

F14 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I**

and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

F15 Words in s. 30D substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F16 Words inserted (14.1.1991) by Environmental Protection Act 1990 (c. 43, SIF 46:4), ss. 162(1), 164(3), **Sch. 15 para. 15(2)**; S.I. 1991/96, art.

F17 Words in s. 30D(1) substituted (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60), ss. 2(1), 4(2), **Sch. 1 para. 27(1)**

Modifications etc. (not altering text)

C12 S. 30D extended (2.12.1991) by S.I. 1991/2539, reg. 3, **Sch.**
S. 30D amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. II para. 16** (with ss. 42, 46)

[F18 30E Consultation and collaboration.

In the performance of [F19 its] functions in relation to waters partly in Scotland and partly in England [F20 SEPA] shall, in matters of common interest, consult and collaborate with the [F20 Environment Agency].

Textual Amendments

F18 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

F19 Word in s. 30E substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(5)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F20 Words in s. 30E substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(5)(b)(c)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[F21 Control of entry of polluting matter and effluents into water]

Textual Amendments

F21 Crossheading inserted (S.) (1.4.1996) by 1995 c. 25, s. 106, **Sch. 16 para. 2** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[F22 30F Pollution offences.

(1) A person contravenes this section if he causes or knowingly permits any poisonous, noxious or polluting matter or any solid waste matter to enter any controlled waters.

(2) A person contravenes this section if he causes or knowingly permits any matter, other than trade effluent or sewage effluent, to enter controlled waters by being discharged from a sewer or from a drain in contravention of a prohibition imposed under section 30G below.

(3) A person contravenes this section if he causes or knowingly permits any trade effluent or sewage effluent to be discharged—
  (a) into any controlled waters; or
  (b) from land in Scotland, through a pipe, into the sea outside the seaward limits of controlled waters.

(4) A person contravenes this section if he causes or knowingly permits any trade effluent or sewage effluent to be discharged, in contravention of any prohibition imposed under section 30G below, from a building or from any plant—
  (a) on to or into any land; or
  (b) into any waters of a loch or pond which are not inland waters.

(5) A person contravenes this section if he causes or knowingly permits any matter whatever to enter any inland waters so as to tend (either directly or in combination with other matter which he or another person causes or permits to enter those waters) to impede the proper flow of the waters in a manner leading, or likely to lead, to a substantial aggravation of—
  (a) pollution due to other causes; or
  (b) the consequences of such pollution.

(6) Subject to the following provisions of this Part, a person who contravenes this section 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.**]**

Textual Amendments

F22 Ss. 30F-30J inserted (S.) (1.4.1996) by 1995 c. 25, s. 106, **Sch. 16 para. 2** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C13 S. 30F applied (with modifications) (28.7.1998) by 1998 c. iii, s. 1, **Sch.** para. s. 29(4)

[F23 30G Prohibition of certain discharges by notice or regulations.

(1) For the purposes of section 30F above a discharge of any effluent or other matter is, in relation to any person, in contravention of a prohibition imposed under this section if, subject to the following provisions of this section—
  (a) SEPA has given that person notice prohibiting him from making or, as the case may be, continuing the discharge; or
  (b) SEPA has given that person notice prohibiting him from making or, as the case may be, continuing the discharge unless specified conditions are observed, and those conditions are not observed.

(2) For the purposes of section 30F above a discharge of any effluent or other matter is also in contravention of a prohibition imposed under this section if the effluent or matter discharged—
  (a) contains a prescribed substance or a prescribed concentration of such a substance; or

(b) derives from a prescribed process or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts.

(3) Nothing in subsection (1) above shall authorise the giving of a notice for the purposes of that subsection in respect of discharges from a vessel; and nothing in any regulations made by virtue of subsection (2) above shall require any discharge from a vessel to be treated as a discharge in contravention of a prohibition imposed under this section.

(4) A notice given for the purposes of subsection (1) above shall expire at such time as may be specified in the notice.

(5) The time specified for the purposes of subsection (4) above shall not be before the end of the period of three months beginning with the day on which the notice is given, except in a case where SEPA is satisfied that there is an emergency which requires the prohibition in question to come into force at such time before the end of that period as may be so specified.

(6) Where, in the case of such a notice for the purposes of subsection (1) above as (but for this subsection) would expire at a time at or after the end of the said period of three months, an application is made before that time for a consent in pursuance of section 34 of this Act in respect of the discharge to which the notice relates, that notice shall be deemed not to expire until the result of the application becomes final—

(a) on the grant or withdrawal of the application;

(b) on the expiration, without the bringing of an appeal with respect to the decision on the application, of any period prescribed by virtue of section 39(2) below as the period within which any such appeal must be brought; or

(c) on the withdrawal or determination of any such appeal.**]**

Textual Amendments

F23 Ss. 30F-30J inserted (S.) (1.4.1996) by 1995 c. 25, s. 106, **Sch. 16 para. 2** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[F24 30H Discharges into and from sewers etc.

(1) For the purposes of section 30F above where—

(a) any sewage effluent is discharged as mentioned in subsection (3) or (4) of that section from any sewer or works—

(i) vested in a sewerage authority; or

(ii) vested in a person other than a sewerage authority and forming (or forming part of) a system provided by him such as is mentioned in section 98(1)(b) of the M1 Local Government etc. (Scotland) Act 1994; and

(b) the authority or, as the case may be, the person did not cause or knowingly permit the discharge but was bound (either unconditionally or subject to conditions which were observed) to receive into the sewer or works matter included in the discharge,

the authority or person shall be deemed to have caused the discharge.

(2) A sewerage authority shall not be guilty of an offence under section 30F of this Act by reason only of the fact that a discharge from a sewer or works vested in the authority contravenes conditions of a consent relating to the discharge if—

(a) the contravention is attributable to a discharge which another person caused or permitted to be made into the sewer or works; and

(b) the authority either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions but the conditions were not observed; and

(c) the authority could not reasonably have been expected to prevent the discharge into the sewer or works;

and a person shall not be guilty of such an offence in consequence of a discharge which he caused or permitted to be made into a sewer or works vested in a sewerage authority if the authority was bound to receive the discharge there either unconditionally or subject to conditions which were observed.

(3) A person in whom any such sewer or works as is described in subsection (1)(a)(ii) above is vested (such person being in this subsection referred to as a "relevant person") shall not be guilty of an offence under section 30F of this Act by reason only of the fact that a discharge from the sewer or works contravenes conditions of a consent relating to the discharge if—

(a) the contravention is attributable to a discharge which another person caused or permitted to be made into the sewer or works; and

(b) the relevant person either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions but the conditions were not observed; and

(c) the relevant person could not reasonably have been expected to prevent the discharge into the sewer or works;

and another person shall not be guilty of such an offence in consequence of a discharge which he caused or permitted to be made into a sewer or works vested in a relevant person if the relevant person was bound to receive the discharge there either unconditionally or subject to conditions which were observed.**]**

Textual Amendments

F24 Ss. 30F-30J inserted (S.) (1.4.1996) by 1995 c. 25, s. 106, **Sch. 16 para. 2** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Marginal Citations

M1 1994 c.39.

[[F25]30I Defence to principal offences in respect of authorised discharges.

(1) Subject to the following provisions of this section, a person shall not be guilty of an offence under section 30F above in respect of the entry of any matter into any waters or any discharge if the entry occurs or the discharge is made under and in accordance with, or as a result of, any act or omission under and in accordance with—

(a) a consent in pursuance of section 34 of this Act or under Chapter II of Part III of the [M2]Water Resources Act 1991 (which makes corresponding provision for England and Wales);

(b) an authorisation for a prescribed process designated for central control granted under Part I of the [M3]Environmental Protection Act 1990;

[F26]**[** (ba) a permit granted by SEPA under regulations made under section 2 of the Pollution Prevention and Control Act 1999;**]]**

(c) a waste management or disposal licence;

(d) a licence granted under Part II of the [M4]Food and Environment Protection Act 1985;

(e) section 33 of the [M5]Water (Scotland) Act 1980 (temporary discharge by authorities in connection with the construction of works);

(f) any provision of a local Act or statutory order which expressly confers power to discharge effluent into water; or

(g) any prescribed enactment.

(2) Nothing in any disposal licence shall be treated for the purposes of subsection (1) above as authorising—

(a) any such entry or discharge as is mentioned in subsections (2) to (4) of section 30F above; or

(b) any act or omission so far as it results in any such entry or discharge.

(3) In this section—

"disposal licence" means a licence issued in pursuance of section 5 of this Act;

"local Act" includes enactments in a public general Act which amend a local Act;

"statutory order" means an order, byelaw, scheme or award made under an Act of Parliament, including an order or scheme confirmed by Parliament or brought into operation in accordance with special parliamentary procedure; and

"waste management licence" means such a licence granted under Part II of the [M6]Environmental Protection Act 1990.

Textual Amendments

F25 Ss. 30F-30J inserted (S.) (1.4.1996) by 1995 c. 25, s. 106, **Sch. 16 para. 2** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F26 S. 30I(ba) inserted (28.9.2000) by S.S.I. 2000/323, regs. 1(1), 36, **Sch. 10**, para. 1

Modifications etc. (not altering text)

C14 S. 30I(1) applied (with modifications) (1.4.1999) by S.I. 1998/2746, **reg. 14(2)**

Marginal Citations

M2 1991 c. 57.

M3 1990 c. 43.

M4 1985 c. 48.

M5 1980 c. 45.

M6 1990 c. 43.

[[F27]30J Other defences to principal offences.

(1) A person shall not be guilty of an offence under section 30F above in respect of the entry of any matter into any waters or any discharge if—

(a) the entry is caused or permitted, or the discharge is made, in an emergency in order to avoid danger to life or health;

(b) that person takes all such steps as are reasonably practicable in the circumstances for minimising the extent of the entry or discharge and of its polluting effects; and

(c) particulars of the entry or discharge are furnished to SEPA as soon as reasonably practicable after the entry occurs.

(2) A person shall not be guilty of an offence under section 30F above by reason of his causing or permitting any discharge of trade or sewage effluent from a vessel.

(3) A person shall not be guilty of an offence under section 30F above by reason only of his permitting water from an abandoned mine or an abandoned part of a mine to enter controlled waters.

(4) Subsection (3) 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.

(5) In determining for the purposes of subsection (4) above whether a mine or part of a mine became abandoned before, on or after 31st December 1999 in a case where the mine or part has become abandoned on two or more occasions, of which—

(a) at least one falls on or before that date, and

(b) at least one falls after that date,

the mine or part shall be regarded as becoming abandoned after that date (but without prejudice to the operation of subsection (3) above in relation to that mine or part at, or in relation to, any time before the first of those occasions which falls after that date).

(6) Where, immediately before a part of a mine becomes abandoned, that part is the only part of the mine not falling to be regarded as abandoned for the time being, the abandonment of that part shall not be regarded for the purposes of subsection (4) or (5) above as constituting the abandonment of the mine, but only of that part of it.

(7) A person shall not, otherwise than in respect of the entry of any poisonous, noxious or polluting matter into any controlled waters, be guilty of an offence under section 30F above by reason of his depositing the solid refuse of a mine or quarry on any land so that it falls or is carried into inland waters if—

(a) he deposits the refuse on the land with the consent of SEPA;

(b) no other site for the deposit is reasonably practicable; and

(c) he takes all reasonably practicable steps to prevent the refuse from entering those inland waters.

(8) A roads authority obliged or entitled to keep open a drain by virtue of section 31 of the [M7]Roads (Scotland) Act 1984 shall not be guilty of an offence under section 30F above by reason of its causing or permitting any discharge to be made from a drain kept open by virtue of that section unless the discharge is made in contravention of a prohibition imposed under section 30G above.**]**

Textual Amendments

F27 Ss. 30F-30J inserted (S.) (1.4.1996) by 1995 c. 25, s. 106, **Sch. 16 para. 2** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Marginal Citations

M7 1984 c. 54.

Control of entry of polluting matter and effluents into water

[F28 31 Control of pollution of rivers and coastal waters etc.

F29(1) . . . . . .

F29(2) . . . . . .

F29(3) . . . . . .

(4) Where it appears to the Secretary of State that, with a view to preventing poisonous, noxious or polluting matter from entering any controlled waters, it is appropriate to prohibit or restrict the carrying on in a particular area of activities which he considers are likely to result in pollution of the waters, then, subject to subsection (5) below, he may by regulations—

(a) designate the area; and

(b) provide that prescribed activities shall not be carried on at any place within the area except with the consent (which shall not be unreasonably withheld) of **[**F30SEPA**]]** and in accordance with any reasonable conditions to which the consent is subject;

(c) provide that a contravention of the regulations shall be an offence and prescribe the maximum penalty for the offence; and

(d) make provision for the imposition by **[**F31SEPA**]** of charges in respect of the consent mentioned in paragraph (b) above.

(5) It shall be the duty of the Secretary of State, before he makes any regulations under subsection (4) above—

(a) to publish in the Edinburgh Gazette and in at least one newspaper circulating in the area in question a copy of the proposed regulations and a notice specifying—

(i) a period of not less than twenty-eight days, beginning with the date on which the notice is first published, within which objections to the proposed regulations may be made, and

(ii) the person to whom such objections may be made; and

(b) to consider any objections to the proposed regulations which are made within that period and, if such an objection is so made by a prescribed person and is not withdrawn, to cause a local inquiry to be held in pursuance of section 96 of this Act with respect to the proposed regulations;

and the Secretary of State may, after considering any such objections as are mentioned in paragraph (b) of this subsection and the report of any person appointed to hold a local inquiry with respect to the proposed regulations, make the regulations either in the form in which a copy of them was published in pursuance of this subsection or in that form with such modifications as he considers appropriate.

(6) **[**[F32]SEPA**]** may by byelaws make such provision as **[**[F33]it**]** considers appropriate for prohibiting or regulating the washing or cleaning, in any controlled waters. . . [F34], of things of a kind specified in the byelaws; and a person who contravenes any byelaws made by virtue of this subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale or such smaller sum as is specified in the byelaws.

[F29](7) . . . . . .

(8) The maximum penalty prescribed in pursuance of subsection (4) of this section shall not exceed the penalties specified in **[**[F35]section 30F(6) above**]**.

(9) In subsection (4) of this section, the reference to the entry of poisonous, noxious or polluting matter into controlled waters shall not include a reference to the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use of any land for agricultural purposes.

[F29](10) . . . . . .

Textual Amendments

F28 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

F29 S. 31(1)-(3), (7) and (10) repealed (1.4.1996) by 1995 c. 25, ss. 106, 120(3), Sch. 16 para. 3, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F30 Words in s. 31(4)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(6)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F31 Words in s. 31(4)(d) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F32 Words in s. 31(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F33 Words in s. 31(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(6)(b)(i)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F34 Words in s. 31(6) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(6)(b)(ii), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F35 Words in s. 31(8) substituted (1.4.1996) by 1995 c. 25, s. 106, **Sch. 16 para. 4** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C15 S. 31 modified by Channel Tunnel Act 1987 (c. 53, SIF 102), ss. 6, 45, Sch. 2 para. 14(3), **Sch. 7 Pt. VI para. 2**

C16 S. 31(4)-(5)(8)-(10) extended (S.)(2.12.1991) by S.I. 1991/2539, reg. 3, **Sch.**
S. 31(4)-(5)(8)-(10) amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 12 Pt. II para. 16** (with ss. 42, 46)

C17 S. 31 applied (with modifications) (24.3.1994) by 1994 c. i, s. 1, **Sch. Pt. II para. 12(4)**
s. 31 applied (with modifications) (24.3.1994) by 1994 c. ii, s. 1, **Sch. Pt. II para. 10(4)**
s. 31 applied (with modifications) (24.3.1994) by 1994 c. iii, s. 1, **Sch. Pt. II para. 11(4)**

C18 S. 31(9) extended by S.I. 1985/708, reg. 4(1), **Sch. 1**

[[F36]31A Requirements to take precautions against pollution.

(1) The Secretary of State may by regulations make provision—

(a) for prohibiting a person from having custody or control of any poisonous, noxious or polluting matter unless prescribed works and prescribed precautions and other steps have been carried out or taken for the purpose of preventing the matter from entering controlled waters;

(b) for requiring a person who already has custody or control of, or makes use of, any such matter to carry out such works for that purpose and to take such precautions and other steps for that purpose as may be prescribed.

(2) Without prejudice to the generality of the power conferred by subsection (1) above, regulations under that subsection may—

(a) confer power on **[**[F37]SEPA**]]**—

(i) to determine for the purposes of the regulations the circumstances in which a person is required to carry out works or take any precautions or other steps; and

(ii) by notice to that person, to impose the requirement and to specify or describe the works, precautions or other steps which that person is required to carry out or take;

(b) provide for appeals to the Secretary of State against notices served by **[**[F37]SEPA**]** in pursuance of provision made by virtue of paragraph (a) above; and

(c) provide that a contravention of the regulations shall be an offence the penalty for which shall be—

(i) on summary conviction, imprisonment for a term not exceeding three months or to a fine not exceeding **[**[F38]£20,000**]** or to both;

(ii) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.

Textual Amendments

F36 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

F37 Words in s. 31A(2)(a)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F38 Word substituted by Environmental Protection Act 1990 (c. 43, SIF 46:4), **s. 145(2)**

Modifications etc. (not altering text)

C19 S. 31A extended (2.12.1991) by S.I. 1991/2539, reg. 3, **Sch.**
S. 31A amended (27.8.1993) by 1993 c. 12, ss. 40, 51(3), **Sch. 3 Pt. II para. 16** (with ss. 42, 46)

C20 S. 31A(2)(b): power to delegate functions conferred (1.4.1996) by 1995 c. 25, **s. 114(2)(a)(i)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[[F39]31B Nitrate sensitive areas.

(1) Where the Secretary of State considers that it is appropriate to do so with a view to achieving the following purpose, that is to say, preventing or controlling the entry of

nitrate into controlled waters as a result of, or of anything done in connection with, the use of any land for agricultural purposes, he may by order designate that land, together with any other land to which he considers it appropriate to apply the designation, as a nitrate sensitive area.

(2) Where any area has been designated as a nitrate sensitive area by an order under this section and the Secretary of State considers that it is appropriate to do so with a view to achieving the purpose mentioned in subsection (1) above, he may, subject to such restrictions (if any) as may be set out in the order, enter into an agreement under which, in consideration of payments to be made by him—

(a) [[F40]the absolute owner (within the meaning of section 93 of the Agricultural Holdings (Scotland) Act 1949)] of any agricultural land in that area; or

(b) where any such owner has given his written consent to the agreement being entered into by any person having another interest in that land, that other person,

accepts such obligations with respect to the management of that land or otherwise as may be imposed by the agreement.

(3) Where it appears to the Secretary of State in relation to any area which is, or is to be, designated by an order under this section as a nitrate sensitive area that it is appropriate for provision for the imposition of requirements, prohibitions or restrictions to be contained in an order under this section (as well as for him to be able to enter into such agreements as are mentioned in subsection (2) above), he may, by a subsequent order under this section or, as the case may be, by the order designating that area—

(a) with a view to achieving the purpose mentioned in subsection (1) above, require, prohibit or restrict the carrying on on or in relation to any agricultural land in that area of such activities as may be specified or described in the order; and

(b) provide for such amounts (if any) as may be specified in or determined under the order to be paid by the Secretary of State, to such persons as may be so specified or determined, in respect of the obligations imposed in relation to that area on those persons by virtue of paragraph (a) above.

(4) Without prejudice to the generality of subsection (3) above, provision contained in anorder under this section by virtue of that subsection may—

(a) confer power upon the Secretary of State to determine for the purposes of the order the circumstances in which the carrying on of any activities is required, prohibited or restricted and to determine the activities to which any such requirement, prohibition or restriction applies;

(b) provide for any requirement to carry on any activity not to apply in cases where the Secretary of State has consented to a failure to carry on that activity and any conditions on which the consent has been given are complied with;

(c) apply a prohibition or restriction in respect of any activities to cases where the activities are carried on without the consent of the Secretary of State or in contravention of any conditions subject to which any such consent is given;

(d) provide that a contravention of a requirement, prohibition or restriction contained in the order or in a condition of a consent given in relation to or for the purposes of any such requirement, prohibition or restriction shall be an offence the maximum penalties for which shall not exceed the maximum penalties specified in **[**[F41]subsection (6) of section 30F above**]**];

(e) provide for amounts paid in pursuance of any provision contained in the order to be repaid at such times and in such circumstances and with such interest as may be specified in or determined under the order;

(f) provide (subject to any regulations under subsection (6) below) for anything falling to be determined under the order by any person to be determined in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be specified in the order.

(5) The Secretary of State shall not make an order under this section except in accordance with any applicable provisions of Schedule 1A to this Act.

(6) The Secretary of State may, for the purposes of any orders under this section which require his consent to the carrying on of any activities or to any failure to carry on any activity, by regulations make provision with respect to—

(a) applications for any such consent;

(b) the conditions of any such consent;

(c) the revocation or variation of any such consent;

(d) the reference to arbitration of disputes about determinations on any such application;

(e) the imposition of charges where such an application has been made, such a consent has been given or there has been any act or omission in pursuance of any such consent; and

(f) the registration of any such application or consent.

Textual Amendments

F39 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

F40 S. 31B: by Agricultural Holdings (Scotland) Act 1991 (c. 55), ss. 88(1), 89(2), **Sch. 11 para. 39** (with s. 45(3)), it is provided that in s. 31(B)(2)(a), for the words "an absolute owner (within the meaning of section 93 of the Agricultural Holdings (Scotland) Act 1949)" there shall be substituted (25.9.1991) "the owner of the dominium utile".

F41 Words in s. 31B(4)(d) substituted (1.4.1996) by 1995 c. 25, s. 106, **Sch. 16 para. 5** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[F42 31C Registering of agreement.

(1) An agreement under subsection (2) of section 31B above may—

(a) where the land is registered in the Land Register of Scotland, be registered in that register;

(b) in any other case, be recorded in the appropriate Division of the General Register of Sasines.

(2) An agreement registered or recorded under subsection (1) above shall be enforceable at the instance of the Secretary of State against persons deriving title to the land (including any person acquiring right to a tenancy by assignation or succession) from the person who entered into the agreement; provided that such an agreement shall not be enforceable against a third party who shall have in good faith and for value acquired

right (whether completed by infeftment or not) to the land prior to the agreement being registered or recorded as aforesaid, or against any person deriving title from such third party.

(3) Notwithstanding the terms of any agreement registered orrecorded under subsection (1) above, the parties to the agreement or any persons deriving title from them may at any time agree to terminate it; and such an agreement to terminate it shall be registered or recorded in the same manner as was the original agreement.**]**

Textual Amendments

F42 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

[F43]31D . . . . . .

Textual Amendments

F43 S. 31D repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(7), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[F44]32 . . . . . .

Textual Amendments

F44 S. 32 repealed (1.4.1996) by 1995 c. 25, ss. 106, 120(3), Sch. 16 para. 3, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[[F45]33 Control of sanitary appliances on vessels.

(1) **[**[F46]SEPA**]]** may by byelaws make such provision asit considers appropriate for prohibiting or regulating the keeping or use, on any controlled waters [F47]. . . **[**[F48] , of vessels of a kind specified in the byelaws which are provided with sanitary appliances; and a person who contravenes any byelaw made by virtue of this section shall be guilty of an offence.

(2) The Secretary of State may by order provide that any byelaws specified in the order which were made by virtue of section 25(1)(c) of the Rivers (Prevention of Pollution) (Scotland) Act 1951 (byelaws) shall have effect, with such modifications (if any) as are so specified, as if made by virtue of the preceding subsection.

(3) In this section "sanitary appliance" means a water closet or other prescribed appliance (except a sink, bath and a shower-bath) which is designed to permit polluting matter to pass into the water on which the vessel in question is for the time being situated.

(4) A person guilty of an offence by virtue of any of the preceding provisions of this section shall be liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale or such smaller sum as may be specified in the byelaws.**]**

Textual Amendments

F45 S. 33 substituted (S.) (31.5.1991) by 1989 c. 15, ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

F46 Words in s. 33(1) substituted (S.) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(1)(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F47 Words in s. 33(1) repealed (S.) (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(8)(b), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F48 Word in s. 33(1) substituted (S.) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(8)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Consents for discharges

[F49 34 Consents for discharges of trade and sewage effluent etc.

(1) An application to **[F50**SEPA**]]** for consent in pursuance of this section for discharges of any effluent or other matter shall be accompanied or supplemented by all such information as **[F51**SEPA**]** may reasonably require; and **[F51**SEPA**]** may if it thinks fit treat an application for consent for discharges at two or more places as separate applications for consent for discharges at each of those places.

(2) Subject to the following section, it shall be the duty of **[F52**SEPA, in relation to an application for consent**]** made in pursuance of this section—

(a) to give the consent either unconditionally or subject to conditions or to refuse it; and

(b) not to withhold the consent unreasonably;

and if within the period of **[F52**four**]** months beginning with the date when an application for consent is received by **[F51**SEPA**]**, or within such longer period as may at any time be agreed upon in writing between **[F51**SEPA**]** and the applicant, **[F51**SEPA**]** has neither given nor refused the consent nor informed the applicant that the application has been transmitted to the Secretary of State in pursuance of the following section, **[F52**the applicant may treat the consent applied for as having been refused**]**.

(3) If it appears to **[F51**SEPA**]** that a person has, without **[F51**SEPA**]** consent, caused or permitted matter to be discharged. . . F53 in contravention of **[F54**section 30F(2) to (4)**]** of this Act and that a similar contravention by that person is likely, **[F51**SEPA**]** may if it thinks fit serve on him an instrument in writing giving its consent, subject to conditions specified in the instrument, for discharges of a kind so specified; but consent given in pursuance of this subsection shall not relate to any discharge which occurred before the instrument giving the consent was served on the recipient of the instrument.

(4) The conditions subject to which **[F51**SEPA**]** may give its consent in pursuance of this section shall be such reasonable conditions as **[F51**SEPA**]** thinks fit; and without prejudice to the generality of the preceding provisions of this subsection those conditions may include reasonable conditions—

(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 period during which the discharges may be made;

(c) 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;

(d) as to the provision, maintenance and testing of meters for measuring the volume and rate of the discharges and apparatus for determining the nature, composition and temperature of the discharges;

(e) 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;

(f) as to the making of returns and the giving of other information to **[**[F51]SEPA**]** about the nature, origin, composition, temperature, volume and rate of the discharges; and

(g) 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;

and it is hereby declared that consent may be given in pursuance of this section subject to different conditions in respect of different periods.

[[F55](5) A person who, in an application for consent in pursuance of this section, makes any statement which he knows to be false or misleading in a material particular or recklessly makes any statement which is false or misleading in a material particular shall be guilty of an offence and shall be 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.**]**

Textual Amendments

F49 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

F50 Words in s. 34 substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F51 Words in s. 34 substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(9)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F52 Words in s. 34(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(9)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F53 Words in s. 34(3) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(9)(c), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F54 Words in s. 34(3) substituted (1.4.1996) by 1995 c. 25, s. 106, **Sch. 16 para. 6** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F55 S. 34(5) substituted (1.4.1996) by 1995 c. 25, s. 112, **Sch. 19 para. 1(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C21 Ss. 34, 35 extended by S.I. 1984/863, reg. 3, **Sch. 1**

C22 S. 34 extended (2.12.1991) by S.I. 1991/2539, reg. 3, **Sch.**
S. 34 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(3), **Sch. 3 Pt. II para. 16** (with ss. 42, 46)

[[F56]35 Reference to Secretary of State of certain applications for consent.

(1) The Secretary of State may, either in consequence of representations made to him or otherwise, direct **[**[F57]SEPA**]]** to transmit to him for determination applications for consent in pursuance of the preceding section which are specified in the direction or are of a kind so specified, and it shall be the duty of **[**[F58]SEPA**]** to comply with the direction and to inform each relevant applicant that his application has been transmitted to the Secretary of State.

(2) Before determining an application transmitted to him by **[**[F57]SEPA**]** in pursuance of this section the Secretary of State may if he thinks fit, and shall if a request to be heard with respect to the application is made to him in accordance with regulations by the applicant or **[**[F58]SEPA**]**, cause a local inquiry to be held in pursuance of section 96 of this Act into the application or afford to the applicant and **[**[F58]SEPA**]** an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(3) Where in pursuance of the preceding subsection the Secretary of State affords to an applicant and an opportunity of appearing before and being heard by a person with respect to the application in question, it shall be the duty of the Secretary of State to afford an opportunity of appearing before and being heard by that person to any person who, in pursuance of subsection (1)(c) or (5) of the following section, has made representations relating to the application.

(4) It shall be the duty of the Secretary of State to determine an application transmitted to him by **[**[F57]SEPA**]**in pursuance of this section by directing **[**[F58]SEPA**]**to refuse its consent in pursuance of the preceding section in consequence of the application or to give the consent either unconditionally or subject to such conditions as are specified in the direction, and it shall be the duty of **[**[F58]SEPA**]** to comply with the direction.

Textual Amendments

F56 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), **ss. 58(7)**, 101(1), 141(6), 160(1)(2)(4), 168, 189(4)--(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58

F57 Words in s. 35 substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F58 Words in s. 35 substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(10)** (with ss. 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C23 Ss. 34, 35 extended by S.I. 1984/863, reg. 3, **Sch. 1**

C24 S. 35 extended (2.12.1991) by S.I. 1991/2539, reg. 3, **Sch.**
S. 35 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(3), **Sch. 3 Pt. II para. 16** (with ss. 42, 46)

[F59 36 Provisions supplementary to ss. 34 and 35.

(1) Where [F60 SEPA]] receives an application for consent in pursuance of section 34 of this Act or serves an instrument in pursuance of subsection (3) of that section, it shall [F61, subject to subsections (2A) and (2B) below,] be the duty of [F62 SEPA], before deciding whether to give or refuse consent in pursuance of the application or, as the case may be, after serving the instrument—

(a) to publish in the prescribed form notice of the application or instrument in two successive weeks in a newspaper or newspapers circulating in—

(i) the area or areas in which the places are situated at which it is proposed in the application that the discharges should be made or, as the case may be, at which discharges are the subject of consent given by the instrument, and

(ii) the area or areas appearing to [F62 SEPA] to be in the vicinity of any controlled waters which [F62 SEPA] considers likely to be affected by the discharges,

and, not earlier than the day following that on which the first publication of the notice is completed in all relevant areas in pursuance of the preceding provisions of this paragraph, to publish such a notice in the Edinburgh Gazette;

(b) to send copies of the application or instrument to each local authority in whose area [F63, and to each water authority within whose limits of supply,]it is proposed in the application that a discharge should be made or in whose area [F63, or within whose limits of supply,]a discharge is the subject of consent given by the instrument and, in the case of an application or instrument relating to coastal waters, relevant territorial waters or an application relating to waters outside the seaward limits of relevant territorial waters, to the Secretary of State; and

(c) to consider any written representations relating to the application or instrument which are made to [F62 SEPA] by any person within the period of six weeks beginning with the date on which the notice of the application or instrument is published in the Edinburgh Gazette.

(2) For the purposes of subsection (1) above, "local authority" means a [F64 council constituted under section 2 of the Local Government etc. (Scotland) Act 1994], and any place at sea at which it is proposed in an application that a discharge should be made shall be treated as situated at the point on land nearest to that place.

[F65 (2A) A person who proposes to make, or has made, an application to SEPA for consent in pursuance of section 34 of this Act may apply to the Secretary of State within a prescribed period for a certificate providing that subsection (1) above shall not apply to that application.

(2B) If the Secretary of State is satisfied that—

(a) it would be contrary to the interests of national security; or

(b) it would prejudice to an unreasonable degree the commercial interests of any person, not to issue a certificate applied for under subsection (2A) above, he may issue the certificate and, if he does so, subsection (1) above shall not apply to the application specified in the certificate.]

(3) Where notice of an application is published by [F60 SEPA] in pursuance of subsection (1)(a) of this section, [F62 SEPA] shall be entitled to recover the cost of publication from the applicant.

(4) **[**[F60]SEPA**]** shall be entitled to disregard the provisions of subsection (1) of this section in relation to an application (except so much of paragraph (b) of that subsection as requires copies of the application to be sent to the Secretary of State) if **[**SEPA**]** proposes to give consent in pursuance of the application and considers that the discharges in question will have no appreciable effect on the water into which they are proposed to be made.

(5) The preceding provisions of this section shall have effect with prescribed modifications in relation to an application which is the subject of a direction in pursuance of subsection (1) of the preceding section.

(6) Where **[**[F60]SEPA**]**proposes to give consent in pursuance of section 34 of this Act in consequence of an application in respect of which representations have been made in pursuance of subsection (1)(c) of this section then—

(a) it shall be the duty of **[**[F62]SEPA**]** to serve notice of the proposal on the person who made the representations and to include in the notice a statement of the effect of the following paragraph; and

(b) that person may, within the period of twenty-one days beginning with the day on which the notice of the proposal is served on him, request the Secretary of State in accordance with regulations to give a direction in pursuance of subsection (1) of the preceding section in respect of the application; and

(c) it shall be the duty of **[**[F62]SEPA**]** not to give consent in consequence of the application before the expiration of that period and, if within that period the said person makes a request in pursuance of the preceding paragraph and serves notice of the request on **[**[F62]SEPA**]**, not to give consent in pursuance of the application unless the Secretary of State has given notice to **[**[F62]SEPA**]** that he declines to comply with the request;

and in calculating in the case of any application the period of **[**[F66]four**]** months mentioned in section 34(2) of this Act or a longer period there mentioned there shall be disregarded any period during which to which the application was made is prohibited by virtue of paragraph (c) of this subsection from giving consent in consequence of the application.

(7) A consent for any discharges which is given in pursuance of section 34 of this Act is not limited to discharges by a particular person and accordingly extends to the discharges in question which are made by any person.

Textual Amendments

F59 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

F60 Words in s. 36(1)(3)(4)(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F61 Words in s. 36(1) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(11)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F62 Words in s. 36 subatituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(10)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F63 Words in s. 36(1)(b) inserted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 95(3)(a)**; S.I. 1996/323, **art. 4(c)**

F64 Words in s. 36(2) substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 95(3)(b)**; S.I. 1996/323, **art. 4(c)**

F65 S. 36(2A)(2B) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(11)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F66 Word in s. 36(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(11)(c)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C25 S. 36 extended by S.I. 1984/863, reg. 3, **Sch. 1**

C26 S. 36: certain functions made exercisable by the Scottish Ministers concurrently with the Minister (1.7.1999) by S.I. 1999/1750, arts. 1(1), 3, **Sch. 2** (with art. 7)

C27 S. 36 extended (2.12.1991) by S.I. 1991/2539, reg. 3, **Sch.**
S. 36 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(3), **Sch. 3 Pt. II para. 16** (with ss. 42, 46)

C28 S. 36(1)–(4) modified by S.I. 1984/865, **reg. 4(1)(2)**

[F67 37 Revocation of consents and alteration and imposition of conditions.

(1) **[**F68SEPA may from time to time review any consent given in pursuance of section 34 of this Act**]** and the conditions, if any, to which the consent is subject; and subject to the following section **[**F69SEPA**]** may, by a notice served on the person making a discharge in pursuance of the consent, revoke the consent if it is reasonable to do so or make reasonable modifications of the said conditions, or, in the case of an unconditional consent, provide that it shall be subject to reasonable conditions specified in the notice.

(2) Subject to the following section, the Secretary of State may—

(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 made to him or otherwise,

direct **[**F70SEPA**]** to serve a notice in pursuance of the preceding subsection containing such provisions as are specified in the direction and it shall be the duty of **[**F69SEPA**]** to comply with the direction; and if **[**F69SEPA**]** fails to serve the notice within such period as the Secretary of State may allow he may serve the notice on behalf of **[**F69SEPA**]**, and it is hereby declared that for the purposes of this Part of the Act a notice served on behalf of **[**F69SEPA**]** by virtue of this subsection is served by **[**F69SEPA**]**.

Textual Amendments

F67 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), **ss. 58(7)**, 101(1), 141(6), 160(1)(2)(4), 168, 189(4)--(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58

F68 Words in s. 37(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(12)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F69 Words in s. 37 substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(10)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F70 Words in s. 37 substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C29 Ss. 37–40 extended by S.I. 1984/863, reg. 3, **Sch. 1**

C30 S. 37 extended (2.12.1991) by S.I. 1991/2539, reg. 3, **Sch.**
S. 37 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(3), **Sch. 3 Pt. II para. 16** (with ss. 42, 46)

[F71 38 Restriction on variation and revocation of consent and of previous variation.

(1) Each instrument signifying the consent of **[**F72SEPA**]]** in pursuance of section 34 of this Act shall specify a period during which no notice in pursuance of subsection (1) or (2)(c) of the preceding section is to be served in respect of the consent without the written agreement of a person making a discharge in pursuance of the consent; and the said period shall be a reasonable period of not less than **[**F73four**]** years beginning with the day on which the consent takes effect.

(2) Each notice served by **[**F72SEPA**]** in pursuance of subsection (1) or (2)(c) of the preceding section (except a notice which only revokes a consent or conditions) shall specify a period during which a subsequent notice in pursuance of that subsection which alters the effect of the first-mentioned notice is not to be served without the written agreement of a person making a discharge in pursuance of the consent to which the first-mentioned notice relates; and the said period shall be a reasonable period of not less than **[**F73four**]** years beginning with the day on which the first-mentioned notice is served.

(3) **[**F74SEPA**]** 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 authority's compliance with a direction given in relation to any consent by virtue of section 37(2)(b) of this Act if—

(a) in complying with that direction **[**F74SEPA**]** does anything which, apart from that direction, it would be precluded from doing by a restriction imposed under subsection (1) or (2) above; and

(b) the direction is not shown to have been in consequence of—

(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 **[**SEPA**]** at the beginning of that period;

and in this paragraph 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.

(4) A restriction imposed under subsection (1) or (2) of this section shall not prevent the service by **[**SEPA**]** of a notice by virtue of section 37(1) or (2)(c) of this Act in respect of a consent given under section 34(3) of this Act if—

(a) the notice is served not more than three months after the beginning of the period specified in section 36(1)(c) of this Act for the making of representations with respect to the consent; and

(b) **[**F74SEPA**]** or, as the case may be, the Secretary of State considers, in consequence of any representations received by it or him within that period, that it is appropriate for the notice to be served.

Textual Amendments

F71 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), **ss. 58(7)**, 101(1), 141(6), 160(1)(2)(4), 168, 189(4)--(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58

F72 Words in s. 38(1)(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F73 Word in s. 38(1) and (2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(13)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F74 Words in s. 38(3)(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(10)** (with ss. 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C31 Ss. 37–40 extended by S.I. 1984/863, reg. 3, **Sch. 1**

C32 S. 38 extended (2.12.1991) by 1991/2539, reg. 3, Sch.
S. 38 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(3), **Sch. 3 Pt. II para. 16** (with ss. 42, 46)

[[F75]38A General review of consents.

(1) If it appears appropriate to the Secretary of State to do so he may at any time direct SEPA to review—
  (a) the consents given under section 34 of this Act; 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 subsection (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 the review, SEPA 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 such consent which is unconditional, subjecting the consent to conditions.

(4) Where the Secretary of State has received any proposals under subsection (3) above in relation to any consent he may, if it appears appropriate to him to do so, direct SEPA, in relation to that consent—
  (a) to make modifications of the conditions of the consent; or
  (b) in the case of an unconditional consent, to subject the consent to conditions.

(5) A direction given by virtue of subsection (4) above may direct SEPA to do, in relation to any such consent, only—
  (a) any such thing as SEPA 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.**]**

Textual Amendments

F75 S. 38A inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(14)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[F76 39 Appeals to the Secretary of State.

(1) Any questions as to whether—

(a) **[**F77SEPA**]]** has unreasonably withheld its consent in pursuance of **[**F78section 30J(4)**]** or 34 of this Act or regulations made by virtue of section 31(4) of this Act or has given its consent in pursuance of the said section 34 or such regulations subject to conditions which are unreasonable; or

(b) a notice served in pursuance of section 37(1) of this Act contains terms (other than a term required by subsection (2) of **[**F79section 38 of this Act**]**) which are unreasonable; or

(c) the period specified in any instrument or notice in pursuance of subsection (1) or (2) of **[**F79section 38 of this Act**]** is unreasonable,

shall be determined for the purposes of this Part of this Act by the Secretary of State; but no question relating to a determination of the Secretary of State in pursuance of section 35(4) of this Act shall be referred to him in pursuance of this subsection and any such determination shall be final.

(2) Provision may be made by regulations as to the manner in which and the time within which a question may be referred or a request may be made in pursuance of the preceding provisions of this section and as to the procedure for dealing with such a reference or request.

(3) In any case where—

(a) a question as to whether **[**F77SEPA**]** has unreasonably withheld its consent in pursuance of section 34 of this Act, or has given its consent in pursuance of that section subject to conditions which are unreasonable, is referred to the Secretary of State in pursuance of this section; and

(b) representations relating to the application for the consent in question were made to **[**F80SEPA**]** in pursuance of section 36(1)(c) of this Act,

it shall be the duty of the Secretary of State, before he determines the question, to secure that **[**F80SEPA**]** has served notice of the reference on the persons who made the representations and to take account of any further written representations relating to the application which are received by him from those persons within a prescribed period.

(4) Where a question is referred to the Secretary of State in pursuance of subsection (1) of this section and he determines that the consent in question was unreasonably withheld or that the conditions or terms or period in question are or is unreasonable, he shall give to **[**F80SEPA**]** such a direction as he thinks fit with regard to the consent, conditions, terms or period and it shall be the duty of **[**F80SEPA**]** to comply with the direction.

(5) The withholding by **[**F77SEPA**]** of such a consent as is mentioned in subsection (1) of this section, the conditions subject to which such a consent is given and such **[**F81period as is**]** so mentioned shall be treated as reasonable for the purposes of this Part of this Act until the contrary is determined in pursuance of subsection (1) of this section except that where a question as to the reasonableness of the conditions of a consent

given in pursuance of regulations made by virtue of section 31(4) of this Act is referred to the Secretary of State in pursuance of this section the consent shall be treated for those purposes as unconditional while the reference is pending.

[[F82](5A) Subject to subsection (5B) below, where a question is referred to the Secretary of State in pursuance of subsection (1)(b) above, the revocation of the consent or, as the case may be, the modification of the conditions of the consent or the provision that the consent (having been unconditional) shall be subject to conditions, shall not take effect while the reference is pending.

(5B) Subsection (5A) above shall not apply to a reference where the notice effecting the revocation, modification or provision in question includes a statement that in the opinion of SEPA it is necessary for the purpose of preventing or, where that is not practicable, minimising—

(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.

(5C) Where the reference falls within subsection (5B) above, if, on the application of the holder or former holder of the consent, the Secretary of State (or other person determining the question referred) determines that SEPA acted unreasonably in excluding the application of subsection (5A) above, then—

(a) if the reference is still pending at the end of the day on which that determination is made, subsection (5A) above shall apply to the reference from the end of that day; and

(b) the holder or former holder of the consent shall be entitled to recover compensation from SEPA 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 a single arbiter appointed, in default of agreement between the parties concerned, by the Secretary of State on the application of any of the parties.**]**

(6) At any stage of the proceedings on a reference to the Secretary of State in pursuance of this section he may, and shall if so directed by the Court of Session, state in the form of a special case for the decision of the court any question of law arising in those proceedings.

[[F83](7) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals).

(8) In this section "the holder", in relation to a consent, is the person who has the consent.**]**

Textual Amendments

F76 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), **ss. 58(7)**, 101(1), 141(6), 160(1)(2)(4), 168, 189(4)--(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58

F77 Words in s. 39(1)(3)(5) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F78 Words in s. 39(1)(a) substituted (1.4.1996) by 1995 c. 25, s. 106, **Sch. 16 para. 7** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F79 Words in s. 39(1)(b)(c) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(15)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F80 Words in s. 39(3)(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(10)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F81 Words in s. 39(5) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(15)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F82 S. 39(5A)-(5C) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(15)(c)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F83 S. 39(7)(8) added (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(15)(d)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C33 Ss. 37–40 extended by S.I. 1984/863, reg. 3, **Sch. 1**

C34 S. 39 extended (2.12.1991) by S.I. 1991/2539, reg. 3, **Sch.**
S. 39 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(3), **Sch. 3 Pt. II para. 16** (with ss. 42, 46)

C35 S. 39(1): power to delegate functions conferred (1.4.1996) by 1995 c. 25, **s. 114(2)(b)(3)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

C36 S. 39(5A)-(5C) applied (1.4.1996) by S.I. 1996/973, **reg. 3**

[F84 40 Transitional provisions relating to consent.

(1) Regulations may provide—

(a) for any consent for discharges which was given in pursuance of the Rivers (Prevention of Pollution) (Scotland) Acts 1951 and 1965 to have effect for any of the purposes of this Part of this Act as if given in pursuance of prescribed provisions of section 34 of this Act; and

(b) for any conditions to which such a consent was subject in pursuance of any of those enactments to have effect for any of those purposes as if attached to the consent in pursuance of prescribed provisions of this Part of this Act.

(2) Regulations may provide for the terms of a consent for an outlet which was given in pursuance of the Rivers (Prevention of Pollution) (Scotland) Act 1951 and for conditions to which such a consent was subject in pursuance of that Act or which were imposed with respect to the outlet in pursuance of section 28(4) of that Act—

(a) to have effect, with or without modifications, for any of the purposes of this Part of this Act as if the terms or conditions were conditions attached to a consent given in pursuance of section 34 of this Act for discharges from the outlet; or

(b) to be treated, with or without modifications, for any of those purposes in such other manner as may be prescribed.

(3) An application for such a consent as is mentioned in subsection (1) of this section which is pending immediately before the relevant day shall be treated on and after that day as an application for consent in pursuance of section 34 of this Act which was made on the day on which it was actually made.

F85(4) . . . . . .

(5) Regulations may provide for any appeal which immediately before the relevant day is pending in pursuance of the Rivers (Prevention of Pollution) (Scotland) Acts 1951

and 1965 to be treated on and after that day as an appeal in pursuance of prescribed provisions of this Part of this Act.

(6) In this section "the relevant day" means 31st January 1985.**]**

Textual Amendments

F84 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

F85 S. 40(4) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(16), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C37 Ss. 37–40 extended by S.I. 1984/863, reg. 3, **Sch. 1**

C38 S. 40 extended (2.12.1991) by S.I. 1991/2539, reg. 3, **Sch.**
S. 40 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(3), **Sch. 3 Pt. II para. 16** (with ss. 42, 46)

Ancillary provisions relating to control of discharges

[F86 41 Registers.

(1) It shall be the duty of **[F87**SEPA**]]**to maintain in accordance with regulations, registers containing prescribed particulars of **[F88**or relating to**]**—

(a) any notices of water quality objectives or other notices served under section 30C above;

(b) application for consents—

(i) made to **[F89**SEPA**]** in pursuance of this Part of this Act;

(ii) sent to the Secretary of State in pursuance of section 34 of this Act (as modified by regulations made under section 55 of this Act);

(c) consents given in pursuance of any provision of this Part of this Act F90 . and the conditions to which the consents are subject;

(d) samples—

(i) of effluent taken by **[F89**SEPA**]** in pursuance of section 19 of the Rivers (Prevention of Pollution) (Scotland) Act M8 1951;

F91 (ii) . . . . . .

(iii) of water taken by **[F89**SEPA**]**;

and information produced by analyses of the samples and the steps taken in consequence of the information;

F92 (e) . . . . . .

[F93 (f) enforcement notices served under section 49A of this Act;

(g) directions given by the Secretary of State in relation to SEPA's functions under this Part of this Act;

(h) convictions, for offences under this Part of this Act, of persons who have the benefit of consents under section 34 of this Act;

(j) information obtained or furnished in pursuance of conditions of such consents;

(k) works notices under section 46A of this Act;

(l) appeals under section 46C of this Act;

(m) convictions for offences under section 46D of this Act; and

(n) such other matters relating to the quality of water as may be prescribed.**]**

(2) It shall be the duty of **[**[F87]SEPA**]**—

(a) to secure that registers maintained by **[**[F89]SEPA**]** in pursuance of the preceding subsection are, after such date as is prescribed with respect to the registers, open to inspection by the public free of charge at all reasonable hours; and

(b) to afford members of the public reasonable facilities for obtaining from **[**[F89]SEPA**]**, on payment of reasonable charges, copies of entries in the register.**[**[F94] and, for the purposes of this subsection, places may be prescribed 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.**]**

[[F95](3) The Secretary of State may give SEPA 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) of this section or which, by virtue of section 42A or 42B of this Act, ought to have been excluded from the registers.**]**

Textual Amendments

F86 Ss. 31, 32 and 34-42 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and for ss. 31-32 and ss. 34-42 there is substituted (S.) ss. 30A-32 and 34-42 by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 4, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

F87 Words in s. 41(1)(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F88 Words in s. 41(1) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(17)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F89 Words in s. 41(1)(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(10)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F90 Words in s. 41(1)(c) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(17)(b)(i), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F91 S. 41(1)(d)(ii) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(17)(b)(ii), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F92 S. 41(1)(e) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(17)(b)(iii), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F93 S. 41(1)(f)-(n) added (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(17)(c)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F94 Words in s. 41(2) added (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(18)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F95 S. 41(3) added (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(19)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C39 S. 41 extended by S.I. 1985/708, reg. 4(1), **Sch. 1**

C40 S. 41 modified by S.I. 1985/813, **reg. 3(2)**

C41 S. 41 extended (2.12.1991) by S.I. 1991/2539, reg. 3, **Sch.**
S. 41 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(3), **Sch. 3 Pt. II para. 16** (with ss. 42, 46)

Marginal Citations

M8 1951 c.66**(46:4)**.

[F96 42A Exclusion from registers of information affecting national security.

(1) No information shall be included in a register kept or maintained by SEPA under section 41 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 purposes of securing the exclusion from registers of information to which subsection (1) of this section applies, give SEPA 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 to be referred to the Secretary of State in pursuance of paragraph (b) of this subsection shall be included in any such register until the Secretary of State determines that it should be so included.

(3) SEPA shall notify the Secretary of State of any information it excludes from a register in pursuance of directions under subsection (2) of this section.

(4) A person may, as respects any information which appears to him to be information to which subsection (1) of this section 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 SEPA 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.**]**

Textual Amendments

F96 Ss. 42A and 42B substituted (1.4.1996) for s. 42 by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(20)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C42 s. 42A applied (with modifications) (1.4.1999) by S.I. 1998/2746, **reg. 14(3)**

C43 S. 42A: certain functions made exercisable by the Scottish Ministers concurrently with the Minister (1.7.1999) by S.I. 1999/1750, arts. 1(1), 3, **Sch. 2** (with art. 7)

[F97 42B 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 SEPA under section 41 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) of this section;

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

(2) Where information is furnished to SEPA for the purpose of—

(a) an application for a consent under section 34 of this Act;

(b) complying with any condition of such a consent; or

(c) complying with a notice under section 93 of this Act,

then, if the person furnishing it applies to SEPA to have the information excluded from any register kept or maintained by SEPA under section 41 of this Act, on the ground that it is commercially confidential (as regards himself or another person), SEPA shall determine whether the information is or is not commercially confidential.

(3) A determination under subsection (2) of this section must be made within the period of fourteen days beginning with the date of the application and if SEPA 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 SEPA that any information (other than information furnished in circumstances within subsection (2) of this section) which has been obtained by SEPA under or by virtue of any provision of any enactment might be commercially confidential, SEPA 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 SEPA under section 41 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 SEPA for the purpose of justifying any such objection;

and, if any representations are made, SEPA shall, having taken the representations into account, determine whether the information is or is not commercially confidential.

(5) Where, under subsection (2) or (4) of this section, SEPA 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 pending the final determination or withdrawal of the appeal.

(6) Subsections (2), (4) and (7) of section 49B of this Act shall apply in relation to appeals under subsection (5) of this section; but

(a) subsection (4) 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) of this section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).

(7) The Secretary of State may give SEPA directions as to specified information, or descriptions of information, which the public interest requires to be included in

registers kept or maintained by SEPA under section 41 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 SEPA for the information to remain excluded from the register on the ground that it is still commercially confidential and SEPA shall determine whether or not that is the case.

(9) Subsections (5) and (6) of this section shall apply in relation to a determination under subsection (8) of this section as they apply in relation to a determination under subsection (2) or (4) of this section.

(10) The Secretary of State may prescribe the substitution (whether in all cases or in such classes or descriptions of case as may be prescribed) for the period for the time being specified in subsection (3) above of 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 register would prejudice to an unreasonable degree the commercial interests of that individual or person.**]**

Textual Amendments

F97 Ss. 42A, 42B substituted (1.4.1996) for s. 42 by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(20)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C44 s. 42B applied (with modifications) (1.4.1999) by S.I. 1998/2746, **reg. 14(3)**

C45 S. 42B(5): power to delegate functions conferred (1.4.1996) by 1995 c. 25, **s. 114(1)(2)(a)(i)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Control of discharges of trade effluent into public sewers

[F100]43 . . . . . .

Textual Amendments

F100 S. 43 repealed (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with Sch. 2 paras. 10, 14(1), 15)

[F101]44 . . . . . .

Textual Amendments

F101 S. 44(1)(3)(5)(6) repealed (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with Sch. 2 paras. 10, 14(1), 15)

S. 44(2)(4) repealed by Water Act 1989 (c. 15, SIF 130), s. 190, **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

[F102 45 . . . . . .

Textual Amendments

F102 S. 45 repealed (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60), ss. 3(1), 4(2), **Sch. 3 Pt. I** (with Sch. 2 paras. 10, 14(1), 15)

Miscellaneous

[F103 46 Operations by river purification authorities to remedy or forestall pollution of water.

(1) **[F104** Subject to subsection (1B) below, **]** Where it appears to a river purification authority that any poisonous, noxious or polluting matter or any solid waste matter is likely to enter, or is or was present in, any controlled waters **F105** . . . , the authority may carry out **F105** . . . such operations as it considers appropriate—

(a) in a case where the matter appears likely to enter such waters, for the purpose of preventing it from doing so; and

(b) in a case where the matter appears to be or to have been present in such waters, for the purpose of removing or disposing of the matter or of remedying or mitigating any pollution caused by its presence in the waters or of restoring the waters (including the fauna and flora dependent on the aquatic environment of the waters), so far as it is reasonably practicable to do so, to the state in which they were immediately before the matter became present in the waters;

but nothing in this subsection empowers a river purification authority to impede or prevent the making of any discharge in pursuance of a consent given by any authority by virtue of section 34 of this Act.

F106(1A) **[** In either case mentioned in subsection (1) of this section, SEPA shall be entitled to carry out investigations for the purpose of establishing the source of the matter and the identity of the person who has caused or knowingly permitted it to be present in controlled waters or at a place from which it was likely, in the opinion of SEPA , to enter controlled waters.

(1B) Without prejudice to the power of SEPA to carry out investigations under subsection (1A) above, the power conferred by subsection (1) above to carry out operations shall be exercisable only in a case where—

(a) SEPA considers it necessary to carry out forthwith any operations falling within paragraph (a) or (b) of subsection (1) above; or

(b) it appears to SEPA , after reasonable inquiry, that no person can be found on whom to serve a works notice under section 46A of this Act. **]**

(2) Where a river purification authority carries out any operations**[F107**or investigations**]** in pursuance of this section the authority shall, subject to the following subsection, be entitled to recover the costs of doing so from any persons who caused or knowingly permitted the matter in question to be present at the place from which it was likely in

the opinion of the authority to enter the controlled waters or, as the case may be, to be present in the controlled waters.

(3) No such costs shall be payable by a person—

(a) in so far as he satisfies the court in which it is sought to recover the costs that the costs were incurred unnecessarily; or

(b) for any operations**[**[F108]or investigations**]** in respect of water from an abandoned mine**[**[F109]or an abandoned part of a mine**]** which that person permitted to reach such a place as is mentioned in the preceding subsection or to enter the controlled waters.

[F110]**[** (3A) Subsection (3)(b) of this section 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.

(3B) Subsections (5) and (6) of section 30J above shall apply in relation to subsections (3) and (3A) above as they apply in relation to subsections (3) and (4) of that section.**]**

(4) In determining the damage which a person has suffered in consequence of pollution in respect of which operations have been or may be carried out in pursuance of this section, account shall be taken of the extent to which it is shown that the damage has been reduced by operations in pursuance of this section and of the extent to which it is shown that the damage is likely to be so reduced.**]**

Textual Amendments

F103 S. 46 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and substituted (S.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 5, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

F104 Words in s. 46(1) inserted (S.) (1.4.2003) by Environment Act 1995 (c. 25), s. 125(3), **Sch. 22 para. 29(21)(a)(i)** (with ss. 7(6), 115, 117); S.S.I. 2003/206, art. 2(a)

F105 Words in s. 46(1) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 29(21)(a)(ii)**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F106 S. 46(1A)(1B) inserted (S.) (1.4.2003) by Environment Act 1995 (c. 25), s. 125(3), **Sch. 22 para. 29(21)(b)** (with ss. 7(6), 115, 117); S.S.I. 2003/206, art. 2(a)

F107 Words in s. 46(2) inserted (S.) (1.4.2003) by Environment Act 1995 (c. 25), s. 125(3), **Sch. 22 para. 29(21)(c)** (with ss. 7(6), 115, 117); S.S.I. 2003/206, art. 2(a)

F108 Words in s. 46(3)(b) inserted (S.) (1.4.2003) by Environment Act 1995 (c. 25), s. 125(3), **Sch. 22 para. 29(21)(d)(i)** (with ss. 7(6), 115, 117); S.S.I. 2003/206, art. 2(a)

F109 Words in s. 46(3)(b) inserted (S.) (1.4.2003) by Environment Act 1995 (c. 25), s. 125(3), **Sch. 22 para. 29(21)(d)(ii)** (with ss. 7(6), 115, 117); S.S.I. 2003/206, art. 2(a)

F110 S. 46(3A)(3B) inserted (S.) (1.4.2003) by Environment Act 1995 (c. 25), s. 125(3), **Sch. 22 para. 29(21)(e)** (with ss. 7(6), 115, 117); S.S.I. 2003/206, art. 2(a)

Modifications etc. (not altering text)

C48 S. 46 extended (2.12.1991) by S.I. 1991/2539, reg. 3, **Sch.**
S. 46 amended (27.8.1993) by 1993 c.12, ss. 40, 51(3), **Sch. 3 Pt. II para. 16** (with ss. 42, 46)

[[F111]**46A Notices requiring persons to carry out anti-pollution operations.**

(1) Subject to the following provisions of this section, where it appears to SEPA 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, SEPA 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 SEPA , 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 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, 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, 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 SEPA by virtue of section 46(1B)(a) of this Act.

(4) Before serving a works notice on any person, SEPA shall reasonably endeavour to consult that person concerning the 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; and

(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 SEPA to require the carrying out of any operations which would impede or prevent the making of any discharge in pursuance of a consent given by SEPA by virtue of section 34 of this Act.

(8) No works notice shall be served on any person requiring him to carry out any 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 (5) and (6) of section 30J of this Act shall apply in relation to subsections (8) and (9) above as they apply in relation to subsections (3) and (4) of that section.

(11) Where SEPA —

(a) carries out any such investigations as are mentioned in section 46(1A) of this Act, 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 SEPA as to whether or how it should exercise its powers under this section. **]**

Textual Amendments

F111 Ss. 46A-46D inserted (1.4.2003 for S. in so far as not already in force, 1.1.2005 for E.W. for specified purposes, 1.4.2015 for S. for specified purposes) by Environment Act 1995 (c. 25), s. 125(3), **Sch. 22 para. 29(22)**; S.S.I. 2003/206, art. 2(a); S.I. 2006/934, art. 2; S.S.I. 2015/73, art. 2(1)

[[F111]46B Grant of, and compensation for, rights of entry etc.

(1) A works notice may require a person to carry out operations in relation to any land or waters notwithstanding that he is not entitled to carry out those operations.

(2) Any person whose consent is required before any 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, SEPA 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 [M11]Environmental Protection Act 1990 in relation to compensation under that section.

(7) In this section—

" relevant land " means—

(a) any land or waters in relation to which the works notice in question requires, or may require, 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 46A of this Act. **]**

Textual Amendments

F111 Ss. 46A-46D inserted (1.4.2003 for S. in so far as not already in force, 1.1.2005 for E.W. for specified purposes, 1.4.2015 for S. for specified purposes) by Environment Act 1995 (c. 25), s. 125(3), **Sch. 22 para. 29(22)**; S.S.I. 2003/206, art. 2(a); S.I. 2006/934, art. 2; S.S.I. 2015/73, art. 2(1)

Marginal Citations

M11 1990 c. 43.

[[F111]46C 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 [M12]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 46A of this Act.

(6) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals).**]**

Textual Amendments

F111 Ss. 46A-46D inserted (1.4.2003 for S. in so far as not already in force, 1.1.2005 for E.W. for specified purposes, 1.4.2015 for S. for specified purposes) by Environment Act 1995 (c. 25), s. 125(3), **Sch. 22 para. 29(22)**; S.S.I. 2003/206, art. 2(a); S.I. 2006/934, art. 2; S.S.I. 2015/73, art. 2(1)

Modifications etc. (not altering text)

C49 Power to delegate functions conferred (1.4.1996) by 1995 c. 25, **s. 114(2)(a)(i)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Marginal Citations

M12 1936 c. 49.

[[F111]46D Consequences of not complying with a works notice.

(1) If a person on whom SEPA 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, SEPA may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by SEPA in doing it.

(4) If SEPA 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, SEPA may take proceedings in any court of competent jurisdiction for the purpose of securing compliance with the notice.

(5) In this section " works notice " means a works notice under section 46A of this Act.**]**

Textual Amendments

F111 Ss. 46A-46D inserted (1.4.2003 for S. in so far as not already in force, 1.1.2005 for E.W. for specified purposes, 1.4.2015 for S. for specified purposes) by Environment Act 1995 (c. 25), s. 125(3), **Sch. 22 para. 29(22)**; S.S.I. 2003/206, art. 2(a); S.I. 2006/934, art. 2; S.S.I. 2015/73, art. 2(1)

[F112 47 Duty of water authorities to deal with waste from vessels etc.

(1) It shall be the duty of each water authority—

(a) to arrange for the collection and disposal of waste from vessels F113 . which appears to][F114 SEPA] to need collection in consequence of the provisions of section 33 of this Act; and

(b) to arrange for the provision of facilities for the washing out of prescribed appliances from vessels. . . F113

(2) A water authority may arrange for the provision of facilities by way of water closets, urinals and wash basins for the use of persons from vessels . . . F113

(3) A port health authority shall have power to make arrangements with a water authority for the purposes of any of the preceding provisions of this section.

Textual Amendments

F112 S. 47 repealed (E.W.) (1.9.1989) by 1989 c. 15, s. 190(3), **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

F113 Words in s. 47(1)(a)(2) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(23), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F114 Words in s. 47 substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(10)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[F115 48 Power of water authorities to exclude unregistered vessels from rivers etc.

(1) Where it appears to a water authority to be appropriate to do so for the purpose of preventing the pollution of streams. . . F116,][F117 SEPA] may make byelaws providing that vessels shall not be on any such streams which are specified in the byelaws unless the vessels are registered by [F117 SEPA] in accordance with the byelaws or are exempted by the byelaws from registration; and a person who causes or knowingly permits a vessel to be on a stream in contravention of byelaws made by virtue of this subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding [F118 £50][F118 level 3 on the standard scale].

(2) Byelaws made by a water authority in pursuance of the preceding subsection may authorise [F117 SEPA] to make reasonable charges in respect of the registration of vessels in pursuance of the byelaws; and no charges shall be payable, by persons in or from vessels registered by [F117 SEPA] in pursuance of the byelaws, in respect of the use by those persons of facilities provided in pursuance of the preceding section by or by arrangement with [F117 SEPA].

Textual Amendments

F115 S. 48 repealed (E.W.) (1.9.1989) by 1989 c. 15, s. 190(3), **Sch. 27 Pt. I** (with ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 189(4)-(10), 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58)

F116 Words in s. 48(1) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(1)(24), **Sch. 24** (with ss. 17(6), 15, 117); S.I. 1996/186, **art. 3**

F117 Words in s. 48(1)(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(10)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F118 Words "level 3 on the standard scale"substituted (11.4.1983) for words "£50" by virtue of (E.W.) Criminal Justice Act 1982 (c. 48), **ss. 38**, 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21), **ss. 289F**, 289G (as inserted by Criminal Justice Act 1982 (c. 48), **s. 54**)

[[F119]49 Deposits and vegetation in rivers etc.

(1) If without the consent of the relevant][[F120]SEPA], which shall not be unreasonably withheld,—

(a) a person removes from any part of the bottom, channel or bed of any inland waters a deposit accumulated by reason of any dam, weir or sluice holding back the waters and does so by causing the deposit to be carried away in suspension in the waters; or

(b) any substantial amount of vegetation cut or uprooted in any inland waters, or so near to any such waters that it falls into it, is allowed to remain in the waters by the wilful default of any person,

then, subject to the following subsection, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(2) Nothing in paragraph (a) of the preceding subsection applies to anything done in the exercise of statutory powers conferred by or under any enactment relating to land drainage, flood prevention or navigation.

(3) Regulations may provide that any reference to inland waters in subsection (1) of this section shall be construed as including a reference to such coastal waters as are prescribed for the purposes of that subsection.

(4) Any question as to whether the consent of [[F120]SEPA]in pursuance of subsection (1) of this section is unreasonably withheld shall be determined by the Secretary of State; and any consent given in pursuance of section 24 of the Rivers (Prevention of Pollution) (Scotland) Act [M13]1951 (which is superseded by this section) shall be treated for the purposes of this section as given in pursuance of this section.

[[F121](5) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals).]

Textual Amendments

F119 S. 49 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and substituted (S.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 5, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

F120 Words in s. 49 substituted (S.) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F121 S. 49(5) added (S.) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(25)** (with ss. 7(6), 115, 117);, S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C50 S. 49(4): power to delegate functions conferred (1.4.1996) by 1995 c. 25, **s. 114(3)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Marginal Citations

M13 1951 c.64**(46:4).**

[F122 49A Enforcement notices as respects discharge consents.

(1) If SEPA 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, it may serve on him a notice (an " enforcement notice ").

(2) An enforcement notice shall—

(a) state that SEPA is of the said opinion;

(b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise;

(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 SEPA 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, SEPA may take proceedings in any court of competent jurisdiction 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 SEPA directions as to whether it should exercise its powers under this section and as to the steps which must be taken.

(6) In this section—

" relevant consent " means a consent for the purposes of section 30J(7)(a), 34 or 49(1) of this Act; and

" the holder ", in relation to a relevant consent, is the person who has the consent in question. **]**

Textual Amendments

F122 Ss. 49A and 49B inserted (S.) (1.1.2001) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(26)** (with ss. 7(6), 115, 117); S.S.I. 2000/433, **art. 2**

[F123 49B Appeals against enforcement notices.

(1) A person upon whom an enforcement notice has been served under section 49A of this Act may appeal to the Secretary of State.

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

(3) An appeal under this section shall, if and to the extent a requirement to do so is prescribed, be advertised in the manner prescribed.

(4) 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).

(5) On the determination of an appeal under this section, 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.

(6) The bringing of an appeal under this section shall not have the effect of suspending the operation of the notice appealed against.

(7) The period within which and the manner in which appeals under this section are to be brought and the manner in which they are to be considered shall be as prescribed.**]**

Textual Amendments

F123 Ss. 49A and 49B inserted (S.) (1.1.2001) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(26)** (with ss. 7(6), 115, 117); S.S.I. 2000/433, **art. 2**

Modifications etc. (not altering text)

C51 S. 49B: power to delegate functions conferred (1.4.1996) by 1995 c. 25, **s. 114(2)(a)(i)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[[F124]50] Investigation of water pollution problems arising from closure of mines.

[[F125]SEPA**]** shall have power to carry out studies for the purpose of ascertaining—

(a) what problems relating to the pollution of controlled waters may arise or have arisen in consequence of the abandonment of any mine. . . [F126] or might arise if any such mine were abandoned; and

(b) what steps are likely to be appropriate for the purpose of dealing with the problems and what the cost of taking those steps would be.

Textual Amendments

F124 S. 50 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and substituted (S.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 168, 189(4)-(10), 190, 193(1), 194(4), Sch. 23 para. 5, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), **58**

F125 Words in s. 50(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F126 Words in s. 50 repealed (S.) (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(27), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[[F127]51 Codes of good agricultural practice.

(1) The Secretary of State may by order made by statutory instrument approve any code of practice issued (whether by him or by another person) for the purpose of—

(a) giving practical guidance to persons engaged in agriculture with respect to activities that may affect controlled waters; and

(b) promoting what appear to him to be desirable practices by such persons for avoiding or minimising the pollution of any such waters,

and may at any time by such an order approve a modification of such a code or withdraw his approval of such a code or modification.

(2) A contravention of a code of practice as for the time being approved under this section shall not of itself give rise to any criminal or civil liability, but **[**[F128]a river purification authority**]]** shall take into account whether there has been or is likely to be any such contravention in determining when and how it should exercise any powers conferred on it by regulations under section 31A of this Act.

(3) The Secretary of State shall not make an order under this section unless he has first consulted the river purification authorities.

Textual Amendments

F127 S. 51 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and substituted (S.) by Water Act 1989 (c. 15, SIF 130), **ss. 58(7)**, 101(1), 141(6), 160(1)(2)(4), 163, 168, 189(4)-?(10), 190, 193(1), 194(4), Sch. 23 para. 5, Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58

F128 Words in s. 51(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C52 S. 51 extended by S.I. 1985/708, art. 3, **Sch. 1**

[[F129]**52 Charges in respect of certain discharges in England and Wales.**

(1) The Secretary of State may, by an order made after consultation with the National Water Council, provide that sections 30 and 31 of the [M14]Water Act 1973 (which among other things relate to charges for facilities provided by water authorities and to schemes for the payment of the charges) shall apply to discharges of trade or sewage effluent which are made or authorised to be made by virtue of a consent given in pursuance of this Act or the [M15]Public Health (Drainage of Trade Premises) Act 1937 as those sections apply to facilities provided by water authorities; and any such order may—

(a) provide that, in the said section 30 as applied by the order, subsection (4) (under which regard is to be had to the cost of providing facilities in fixing charges for the facilities) and references to that subsection shall be omitted; and

(b) repeal sections 59(1)(e) and 61(4) of the [M16]Public Health Act 1961 (which provide for conditions relating to charges to be attached to consents for discharges which are given in pursuance of the said Act of 1937).

(2) An order made in pursuance of the preceding subsection—

(a) shall include provision for appeals to the Secretary of State in respect of charges payable to a water authority by virtue of that subsection; and

(b) may include provision for the giving by the Secretary of State in consequence of an appeal of directions in respect of the charges to the authority or any other party to the appeal (including directions as to the charges which are to be payable in respect of any period before the determination of the appeal);

and the Secretary of State may by order vary or revoke any provisions which by virtue of this subsection or section 104(1)(a) of this Act are contained in an order made in pursuance of this section.

(3) This section does not apply to Scotland.**]**

Textual Amendments

F129 S. 52 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)–(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I**

Marginal Citations

M14 1973 c. 37.
M15 1937 c. 40.
M16 1961 c. 64.

[F130]53 . . . . . .

Textual Amendments

F130 S. 53 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(28), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[F131]54 . . . . . .

Textual Amendments

F131 S. 54 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(28), **Sch. 24** (with ss. 115, 117); S.I. 1996/186, **art. 3**

Supplemental

[F132]55 . . . . . .

Textual Amendments

F132 S. 55 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(28), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

[[F133]55A Regulations under this Part.

Regulations made under this Part of this Act may provide that any provision of this Part, except this section and sections 43 to 45, shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom—

(a) to give effect to any Community obligation or exercise any related right; or

(b) to give effect to any obligation or exercise any related right under any international agreement to which the United Kingdom is for the time being a party,

and "related right", in relation to an obligation, includes any derogation or other right to make more onerous provisions available in respect of that obligation.**]**

Textual Amendments

F133 S. 55A inserted (1.10.1991) by Natural Heritage (Scotland) Act 1991 (c. 28), s. 27(1), **Sch. 10 para. 7(3)**; S.I. 1991/2187, art. 3, **Sch.**

[[F134]56 Interpretation etc. of Part II.

(1) Except where the context otherwise requires, in this Part of this Act—

"agriculture" and "agricultural" have the same meanings as in the Agriculture (Scotland) Act [M17] 1948;

"coastal waters", "controlled waters", "ground waters", "inland waters" and "relevant territorial waters" have the meanings given by section 30A(1) above;

[[F135]"drain" has the same meaning as in the [M18]Sewerage (Scotland) Act 1968;**]]**

"effluent" means any liquid, including particles of matter and other substances in suspension in the liquid;

"micro-organism" includes any microscopic biological entity which is capable of replication;

[[F136]"operations" includes works;**]**

[[F137]"sewage effluent" includes any effluent from sewage disposal, or sewerage, works vested in a sewerage authority;

[[F135]"sewer" has the same meaning as in the Sewerage (Scotland) Act 1968;**]**

"sewerage authority" shall be construed in accordance with section 62 of the Local Government etc. (Scotland) Act 1994;**]**

"substance" includes micro-organisms and any natural or artificial substance or other matter, whether it is in solid or liquid form or in the form of a gas or vapour;

"trade effluent" includes any effluent which is discharged from premises used for carrying on any trade or industry, other than surface water and domestic sewage;

"underground strata" means strata subjacent to the surface of any land;

[[F138]"water authority" shall be construed in accordance with section 62 of the Local Government etc. (Scotland) Act 1994;**]**

"watercourse" includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers, and passages through which water flows except mains and other pipes which belong to the water authority or are used by a water authority or any other person for the purposes only of providing a supply of water to any premises.

(2) In this Part of this Act—

(a) any reference to the waters of any loch or pond or of any river or watercourse includes a reference to the bottom, channel or bed of any loch, pond, river or, as the case may be, watercourse which is for the time being dry; and

(b) any reference to water contained in underground strata is a reference to water so contained otherwise than in a sewer, pipe, reservoir, tank or other underground works constructed in any such strata.

(3) For the purposes of the definition of "trade effluent" in subsection (1) above any premises (whether on land or not) wholly or mainly used (whether for profit or not) for agricultural purposes or for the purposes of fish farming or for scientific research or experiment shall be deemed to be (and in the case of fish farms, always to have been) premises used for carrying on a trade.

F139(4) . . . . . .

(5) For the purposes of this Part of this Act a notice imposing conditions with respect to discharges which was given by a river purification authority in pursuance of—

(a) section 28(4) of the Rivers (Prevention of Pollution) (Scotland) Act 1951; or

(b) section 1(5) of the Rivers (Prevention of Pollution) (Scotland) Act 1965,

shall be treated as having given the authority's consent in pursuance of the Act in question for those discharges subject to those conditions.

(6) Section 30(5) of this Act shall have effect in relation to this Part of this Act as if for any reference to Part I of this Act there were substituted a reference to this Part of this Act.

Textual Amendments

F134 S. 56 repealed (E.W.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 163, 189(4)-(10), 190, 193(1), Sch. 26 paras. 3(1)(2), 17, 40(4), 41(1), 57(6), 58, **Sch. 27 Pt. I** and substituted (S.) by Water Act 1989 (c. 15, SIF 130), ss. 58(7), 101(1), 141(6), 160(1)(2)(4), 168, 189(4)-(10), 190, 193(1), Sch. 23 para. 6, Sch. 26 paras. 3(1)(2), 17, 40(4), 57(6), 58, **Sch. 27 Pt. I**

F135 Definitions in s. 56(1) inserted (1.4.1996) by 1995 c. 25, s. 106, **Sch. 16 para. 8** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F136 Definition in s. 56(1) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 29(29)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F137 Definitions in s. 56 substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 95(5)(a)**; S.I. 1996/323, **art. 4(c)**

F138 Definition in s. 56 substituted (1.4.1996) by 1994 c. 39, s. 180(1), **Sch. 13 para. 95(5)(b)**; S.I. 1996/323, **art. 4(c)**

F139 S. 56(4) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 29(28), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Modifications etc. (not altering text)

C53 S. 56(1)-(4) extended (2.12.1991) by S.I. 1991/2539, reg. 3, **Sch.**
S. 56(1)-(4) amended (27.8.1993) by 1993 c. 12, ss. 40, 51(3), **Sch. 3 Pt. II para. 16** (with ss. 42, 46)

Marginal Citations

M17 1948 c.45**(2:1).**

M18 1968 c. 47.

Status:
Point in time view as at 01/04/2003.

Changes to legislation:
There are currently no known outstanding effects for the Control of Pollution Act 1974, Part II.