



Control of Pollution Act 1974

1974 CHAPTER 40

PART II

POLLUTION OF WATER

Consents for discharges

[^{F1}34] Consents for discharges of trade and sewage effluent etc.

- (1) An application to [^{F2}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 [^{F3}SEPA] may reasonably require; and [^{F3}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 [^{F4}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 [^{F4}four] months beginning with the date when an application for consent is received by [^{F3}SEPA], or within such longer period as may at any time be agreed upon in writing between [^{F3}SEPA] and the applicant, [^{F3}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, [^{F4}the applicant may treat the consent applied for as having been refused].
- (3) If it appears to [^{F3}SEPA] that a person has, without [^{F3}SEPA] consent, caused or permitted matter to be discharged. . . ^{F5} in contravention of [^{F6}section 30F(2) to (4)] of this Act and that a similar contravention by that person is likely, [^{F3}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.

Status: Point in time view as at 25/06/2003.

Changes to legislation: There are currently no known outstanding effects for the Control of Pollution Act 1974, Cross Heading: Consents for discharges. (See end of Document for details)

- (4) The conditions subject to which [^{F3}SEPA] may give its consent in pursuance of this section shall be such reasonable conditions as [^{F3}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 [^{F3}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.

- [^{F7}(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

- 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. 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](#)
- F3** 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](#)
- F4** 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](#)

Status: Point in time view as at 25/06/2003.

Changes to legislation: There are currently no known outstanding effects for the Control of Pollution Act 1974, Cross Heading: Consents for discharges. (See end of Document for details)

- F5** 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**
- F6** 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**
- F7** 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)

- C1** Ss. 34, 35 extended by S.I. 1984/863, reg. 3, **Sch. 1**
- C2** 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)

[^{F8}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 [^{F9}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 [^{F10}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 [^{F9}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 [^{F10}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 [^{F10}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 [^{F9}SEPA] in pursuance of this section by directing [^{F10}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 [^{F10}SEPA] to comply with the direction.

Textual Amendments

- F8** 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**
- F9** 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**
- F10** 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**

Status: Point in time view as at 25/06/2003.

Changes to legislation: There are currently no known outstanding effects for the Control of Pollution Act 1974, Cross Heading: Consents for discharges. (See end of Document for details)

Modifications etc. (not altering text)

C3 Ss. 34, 35 extended by S.I. 1984/863, reg. 3, **Sch. 1**

C4 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)

[^{F11}36 Provisions supplementary to ss. 34 and 35.

(1) Where [^{F12}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 [^{F13}, subject to subsections (2A) and (2B) below,] be the duty of [^{F14}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 [^{F14}SEPA] to be in the vicinity of any controlled waters which [^{F14}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 [^{F15}to Scottish Water and] to each local authority in whose area ^{F16}... it is proposed in the application that a discharge should be made or in whose area ^{F16}... 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 [^{F14}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 [^{F17}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.

^{F18}(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

Status: Point in time view as at 25/06/2003.

Changes to legislation: There are currently no known outstanding effects for the Control of Pollution Act 1974, Cross Heading: Consents for discharges. (See end of Document for details)

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 [F12SEPA] in pursuance of subsection (1)(a) of this section, [F14SEPA] shall be entitled to recover the cost of publication from the applicant.
- (4) [F12SEPA] 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 [F12SEPA] 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 [F14SEPA] 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 [F14SEPA] 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 [F14SEPA], not to give consent in pursuance of the application unless the Secretary of State has given notice to [F14SEPA] that he declines to comply with the request;and in calculating in the case of any application the period of [F19four] 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

- F11** 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](#)
- F12** 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](#)

Status: Point in time view as at 25/06/2003.

Changes to legislation: There are currently no known outstanding effects for the Control of Pollution Act 1974, Cross Heading: Consents for discharges. (See end of Document for details)

- F13** 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**
- F14** Words in s. 36 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**
- F15** Words in s. 36(1)(b) inserted (25.6.2003) by The Water Industry (Scotland) Act 2002 (Consequential Provisions) Order 2003 (S.S.I. 2003/331), art. 1, **Sch. para. 4(3)(a)**
- F16** Words in s. 36(1)(b) repealed (25.6.2003) by The Water Industry (Scotland) Act 2002 (Consequential Provisions) Order 2003 (S.S.I. 2003/331), art. 1, **Sch. para. 4(3)(b)**
- F17** 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)**
- F18** 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**
- F19** 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)

- C5** S. 36 extended by S.I. 1984/863, **reg. 3, Sch. 1**
- C6** 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)
- C7** 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)
- C8** S. 36(1)–(4) modified by S.I. 1984/865, **reg. 4(1)(2)**

[^{F20}37] **Revocation of consents and alteration and imposition of conditions.**

- (1) [^{F21}SEPA 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 [^{F22}SEPA] 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 [^{F23}SEPA] 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 [^{F22}SEPA] to comply with the direction; and if [^{F22}SEPA] fails to serve the notice within such period as the Secretary of State may allow he may serve the notice on behalf of [^{F22}SEPA], and it is hereby declared that for the purposes of this Part of the Act a notice served on behalf of [^{F22}SEPA] by virtue of this subsection is served by [^{F22}SEPA].

Textual Amendments

- F20** 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,

Status: Point in time view as at 25/06/2003.

Changes to legislation: There are currently no known outstanding effects for the Control of Pollution Act 1974, Cross Heading: Consents for discharges. (See end of Document for details)

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

F21 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**

F22 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**

F23 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)

C9 Ss. 37–40 extended by S.I. 1984/863, reg. 3, **Sch. 1**

C10 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)

[^{F24}38 Restriction on variation and revocation of consent and of previous variation.

- (1) Each instrument signifying the consent of [^{F25}SEPA] 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 [^{F26}four] years beginning with the day on which the consent takes effect.
 - (2) Each notice served by [^{F25}SEPA] 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 [^{F26}four] years beginning with the day on which the first-mentioned notice is served.
 - (3) [^{F27}SEPA] 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 [^{F27}SEPA] 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.

Status: Point in time view as at 25/06/2003.

Changes to legislation: There are currently no known outstanding effects for the Control of Pollution Act 1974, Cross Heading: Consents for discharges. (See end of Document for details)

- (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) [^{F27}SEPA] 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

- F24** 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
- F25** 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](#)
- F26** 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](#)
- F27** 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)

- C11** Ss. 37-40 extended by [S.I. 1984/863, reg. 3, Sch. 1](#)
- C12** 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)

[^{F28}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.

Status: Point in time view as at 25/06/2003.

Changes to legislation: There are currently no known outstanding effects for the Control of Pollution Act 1974, Cross Heading: Consents for discharges. (See end of Document for details)

- (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

F28 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**

[^{F29}39 Appeals to the Secretary of State.

- (1) Any questions as to whether—
- (a) [^{F30}SEPA] has unreasonably withheld its consent in pursuance of [^{F31}section 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 [^{F32}section 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 [^{F32}section 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 [^{F30}SEPA] 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 [^{F33}SEPA] 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 [^{F33}SEPA] has served notice of the reference on the persons who made the representations and to take account of any further written representations relating

Status: Point in time view as at 25/06/2003.

Changes to legislation: There are currently no known outstanding effects for the Control of Pollution Act 1974, Cross Heading: Consents for discharges. (See end of Document for details)

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 [F33SEPA] such a direction as he thinks fit with regard to the consent, conditions, terms or period and it shall be the duty of [F33SEPA] to comply with the direction.
- (5) The withholding by [F30SEPA] 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 [F34period 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.
- [F35(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.
- [F36(7) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals).

Status: Point in time view as at 25/06/2003.

Changes to legislation: There are currently no known outstanding effects for the Control of Pollution Act 1974, Cross Heading: Consents for discharges. (See end of Document for details)

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

Textual Amendments

- F29** 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](#)
- F30** 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](#)
- F31** 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](#)
- F32** 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](#)
- F33** 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](#)
- F34** 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](#)
- F35** [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](#)
- F36** [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)

- C13** Ss. 37-40 extended by [S.I. 1984/863, reg. 3](#), [Sch. 1](#)
- C14** [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)
- C15** [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](#)
- C16** [S. 39\(5A\)-\(5C\)](#) applied (1.4.1996) by [S.I. 1996/973, reg. 3](#)

[^{F37}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

Status: Point in time view as at 25/06/2003.

Changes to legislation: There are currently no known outstanding effects for the Control of Pollution Act 1974, Cross Heading: Consents for discharges. (See end of Document for details)

- (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.
- ^{F38}(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

- F37** 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**
- F38** 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)

- C17** Ss. 37-40 extended by S.I. 1984/863, reg. 3, **Sch. 1**
- C18** 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)

Status:

Point in time view as at 25/06/2003.

Changes to legislation:

There are currently no known outstanding effects for the Control of Pollution Act 1974, Cross
Heading: Consents for discharges.