



# Control of Pollution Act 1974

## 1974 CHAPTER 40

### PART V

#### SUPPLEMENTARY PROVISIONS

##### *Legal proceedings*

#### **85 Appeals to Crown Court or Court of Session against decisions of magistrates' court or sheriff**

- (1) An appeal against any decision of a magistrates' court in pursuance of this Act (other than a decision made in criminal proceedings) shall lie to the Crown Court at the instance of any party to the proceedings in which the decision was given if such an appeal does not lie to the Crown Court by virtue of any other enactment.
- (2) In Scotland an appeal against any decision of the sheriff in pursuance of this Act (other than a decision made in criminal proceedings) shall lie to the Court of Session at the instance of any party to the proceedings in which the decision was given if such an appeal does not lie to the Court of Session by virtue of any other enactment.
- (3) Where a person appeals to the Crown Court or the Court of Session against a decision of a magistrates' court or the sheriff dismissing an appeal against a notice served in pursuance of this Act which was suspended pending determination of that appeal, the notice shall again be suspended pending the determination of the appeal to the Crown Court or Court of Session.

#### **86 Protection of members and officers of authorities from personal liability**

- (1) Section 265 of the Public Health Act 1875 (which relates to the protection from personal liability of members and officers of certain authorities when acting under the direction of the authorities) shall have effect as if references to those authorities and that Act included respectively references to water authorities and this Act.
- (2) This section does not apply to Scotland.

**87 Miscellaneous provisions relating to legal proceedings**

- (1) When an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

Where the affairs of a body corporate are managed by its members the preceding provisions of this subsection shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

- (2) Where the commission by any person of an offence under this Act is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of an offence by virtue of this subsection whether or not proceedings for the offence are taken against any other person.
- (3) Notwithstanding anything in section 104 of the Magistrates' Courts Act 1952, a magistrates' court in England and Wales may try an information for an offence under section 3(2) or (3) of this Act or by virtue of section 18(2) of this Act or under section 31(1) of this Act or regulations or byelaws made in pursuance of section 31 of this Act if the information is laid within one year from the commission of the offence; and notwithstanding anything in section 23 of the Summary Jurisdiction (Scotland) Act 1954, summary proceedings in Scotland for any such offence may be commenced at any time within one year from the time when the offence was committed, and subsection (2) of section 23 of the said Act of 1954 shall apply for the purposes of this subsection, in its application to Scotland, as that subsection applies for the purposes of that section.
- (4) Where an appeal against a decision of a relevant authority lies to a magistrates' court by virtue of any provision of this Act, it shall be the duty of the authority to include in any document by which it notifies the decision to the person concerned a statement indicating that such an appeal lies as aforesaid and specifying the time within which it must be brought.
- (5) Where on an appeal to any court against or arising out of a decision of a relevant authority in pursuance of this Act the court varies or reverses the decision it shall be the duty of the authority to act in accordance with the court's decision.
- (6) A judge of any court and a justice of the peace shall not be disqualified from acting in cases arising under this Act by reason of his being, as one of several ratepayers or as one of any other class of persons, liable in common with the others to contribute to or be benefited by any rate or fund out of which any expenses of a relevant authority are to be defrayed.

**88 Civil liability for contravention of s. 3(3)**

- (1) Where any damage is caused by poisonous, noxious or polluting waste which has been deposited on land, any person who deposited it or caused or knowingly permitted it to be deposited, in either case so as to commit an offence under section 3(3) or by virtue of section 18(2) of this Act, is liable for the damage except where the damage—
- (a) was due wholly to the fault of the person who suffered it; or
  - (b) was suffered by a person who voluntarily accepted the risk thereof.

- (2) The matters which under paragraphs (a) to (c) of subsection (4) of section 3 of this Act may be proved by way of defence to a charge of committing an offence under subsection (3) of that section may be proved also by way of defence to an action brought by virtue of the preceding subsection (the reference in the said paragraph (a) to the charge being construed as a reference to the act alleged to give rise to the liability).
- (3) In this section—  
    " damage " includes the death of, or injury to, any person (including any disease and any impairment of physical or mental condition);  
    " fault " has the same meaning as in the Law Reform (Contributory Negligence) Act 1945 ; and  
    " land " includes such water as is mentioned in section 4(4) of this Act.
- (4) For the purposes of the following enactments, namely—  
    (a) the Fatal Accidents Acts 1846 to 1959 ;  
    (b) the Law Reform (Contributory Negligence) Act 1945; and  
    (c) the Limitation Acts 1939 and 1963 and the Law Reform (Limitation of Actions, &c.) Act 1954,  
and for the purposes of any action of damages in Scotland arising out of the death of, or personal injury to, any person, any damage for which a person is liable under subsection (1) of this section shall be treated as due to his fault.
- (5) Subsection (1) of this section is without prejudice to any liability which arises apart from the provisions of this section.

#### *Financial provisions*

### **89 Expenses and receipts of Secretary of State etc.**

- (1) There shall be paid out of money provided by Parliament—  
    (a) any expenses incurred by the Secretary of State for the purposes of this Act; and  
    (b) any increase attributable to the provisions of this Act in the sums payable under any other Act out of money so provided.
- (2) Any sums received by the Secretary of State by virtue of this Act shall be paid into the Consolidated Fund.

### **90 Establishment charges and interest in respect of certain expenses of authorities**

- (1) Where a sum is payable to a water authority by any person by virtue of this Act in respect of the expenses incurred by the authority, the authority shall be entitled to recover from that person such a further sum in respect of its establishment charges as appears to the authority to be reasonable.
- (2) Where such a sum or further sum as is mentioned in the preceding subsection is payable to a water authority by any person or a sum is payable to any other relevant authority by any person by virtue of this Act in respect of the expenses incurred by the authority or by virtue of section 36 of the Local Government Act 1974 in respect of establishment charges related to such expenses or by virtue of section 193 of the

Local Government (Scotland) Act 1947 in respect of general expenses: related to such expenses, then—

- (a) the authority and that person may agree that the sum or further sum shall be paid in instalments; and
  - (b) the authority shall be entitled to receive from that person interest on the sum or further sum, or on such portion of it as is for the time being unpaid, at the rate fixed by subsection (2) of section 171 of the Local Government Act 1972 or, in Scotland, subsection (2) of section 121 of the Local Government (Scotland) Act 1973 (which fix a rate of one quarter per cent, above the rate determined by the Treasury in relation to the loans mentioned in that subsection).
- (3) In the application of this section to Scotland, for the references to a water authority there shall be substituted references to a river purification board established under section 135 of the Local Government (Scotland) Act 1973.

### *Miscellaneous*

## **91 Rights of entry and inspection etc.**

- (1) Any person authorised in writing in that behalf by a relevant authority may at any reasonable time—
- (a) enter upon any land or vessel for the purpose of—
    - (i) performing any function conferred on the authority or that person by virtue of this Act, or
    - (ii) determining whether, and if so in what manner, such a function should be performed, or
    - (iii) determining whether any provision of this Act or of an instrument made by virtue of this Act is being complied with;
  - (b) carry out such inspections, measurements and tests on the land or vessel or of any articles on it and take away such samples of the land or articles as he considers appropriate for such a purpose.
- (2) If it is shown to the satisfaction of a justice of the peace on sworn information in writing—
- (a) that admission to any land or vessel which a person is entitled to enter in pursuance of the preceding subsection has been refused to that person or that refusal is apprehended or that the land or vessel is unoccupied or that the occupier is temporarily absent or that the case is one of emergency or that an application for admission would defeat the object of the entry; and
  - (b) that there is reasonable ground for entry upon the land or vessel for the purpose for which entry is required,
- then, subject to the following subsection, the justice may by warrant under his hand authorise that person to enter the land or vessel, if need be by force.
- (3) A justice of the peace shall not issue a warrant in pursuance of the preceding subsection in respect of any land or vessel unless he is satisfied—
- (a) that admission to the land or vessel in pursuance of subsection (1) of this section was sought after not less than seven days notice of the intended entry had been served on the occupier; or
  - (b) that admission to the land or vessel in pursuance of that subsection was sought in an emergency and was refused by or on behalf of the occupier; or

- (c) that the land or vessel is unoccupied; or
  - (d) that an application for admission to the land or vessel would defeat the object of the entry.
- (4) A warrant issued in pursuance of this section shall continue in force until the purpose for which the entry is required has been satisfied.
- (5) In the application of this section to Scotland—
  - (a) in subsection (1), any reference to this Act shall include a reference to the Rivers (Prevention of Pollution) (Scotland) Act 1951;
  - (b) any reference to a justice of the peace shall include a reference to the sheriff.

## **92 Provisions supplementary to s. 91**

- (1) A person authorised to enter upon any land or vessel In pursuance of the preceding section shall, if so required, produce evidence of his authority before he enters upon the land or vessel.
- (2) A person so authorised may take with him on to the land or vessel in question such other persons and such equipment as may be necessary.
- (3) Admission to any land or vessel used for residential purposes and admission with heavy equipment to any other land or vessel shall not, except in an emergency or in a case where the land or vessel is unoccupied, be demanded as of right in pursuance of subsection (1) of the preceding section unless a notice of the intended entry has been served on the occupier not less than seven days before the demand.
- (4) A person who, in the exercise of powers conferred on him by virtue of the preceding section or this section, enters upon any land or vessel which is unoccupied or of which the occupier is temporarily absent shall leave the land or vessel as effectually secured against trespassers as he found it.
- (5) It shall be the duty of a relevant authority to make full compensation to any person who has sustained damage by reason of—
  - (a) the exercise by a person authorised by the authority of any powers conferred on the person so authorised by virtue of the preceding section or this section; or
  - (b) the failure of a person so authorised to perform the duty imposed on him by the preceding subsection,except where the damage is attributable to the default of the person who sustained it; and any dispute as to a person's entitlement to compensation in pursuance of this subsection or as to the amount of the compensation shall be determined by arbitration.
- (6) A person who wilfully obstructs another person acting in the exercise of any powers conferred on the other person by virtue of the preceding section or this section shall be guilty of an offence and liable on summary conviction to a fine not exceeding £100.
- (7) In the preceding section and this section any reference to an emergency is a reference to a case where a person requiring entry to any land or vessel has reasonable cause to believe that circumstances exist which are likely to endanger life or health and that immediate entry to the land or vessel is necessary to verify the existence of those circumstances or to ascertain their cause or to effect a remedy.

**93 Power of authorities to obtain information**

- (1) Subject to the following subsection, a relevant authority may serve on any person a notice requiring him to furnish to the authority, within a period or at times specified in the notice and in a form so specified, any information so specified which the authority reasonably considers that it needs for the purposes of any function conferred on the authority by this Act.
- (2) Provision may be made by regulations for restricting the information which may be required in pursuance of the preceding subsection and for determining the form in which the information is to be so required.
- (3) A person who—
  - (a) fails without reasonable excuse to comply with the requirements of a notice served on him in pursuance of this section; or
  - (b) in furnishing any information in compliance with such a notice, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular,shall be guilty of an offence and liable on summary conviction to a fine not exceeding £400.
- (4) In the application of this section to Scotland, in subsection (1) the reference to this Act shall include a reference to the Rivers (Prevention of Pollution) (Scotland) Act 1951.

**94 Prohibition of disclosure of information**

- (1) If a person discloses information relating to any trade secret used in carrying on a particular undertaking and the information has been given to him or obtained by him by virtue of this Act he shall, subject to the following subsection, be guilty of an offence and liable on summary conviction to a fine not exceeding £400.
- (2) A person shall not be guilty of an offence under the preceding subsection by virtue of the disclosure of any information if—
  - (a) the disclosure is made—
    - (i) in the performance of his duty, or
    - (ii) in pursuance of section 79(1)(b) of this Act, or
    - (iii) with the consent in writing of a person having a right to disclose the information ; or
  - (b) the information is of a kind prescribed for the purposes of this paragraph and, if regulations made for those purposes provide that information of that kind may only be disclosed in pursuance of the regulations to prescribed persons, the disclosure is to a prescribed person.
- (3) In the application of this section to Scotland, in subsection (1) the reference to this Act shall include a reference to the Rivers (Prevention of Pollution) (Scotland) Act 1951.

**95 Service of documents on and by water authorities**

- (1) Any document required or authorised by virtue of this Act to be served on a water authority shall be so served by addressing it to the authority and leaving it at or sending it by post to the principal office of the authority or any other office specified by the authority as one at which it will accept documents of the same kind as that document.

- (2) Any document required or authorised by virtue of this Act to be served on a person by a water authority may be so served—
  - (a) by delivering it to him or by leaving it at his proper address or by sending it by post to him at that address ; or
  - (b) if the person is a body corporate, by serving it in accordance with the preceding paragraph on the secretary or clerk of that body ; or
  - (c) if the person is a partnership, by serving it as aforesaid on a partner or a person having the control or management of the partnership business.
- (3) For the purposes of this section and section 26 of the Interpretation Act 1889 (which relates to the service of documents by post) in its application to this section, the proper address of any person on whom a document is to be served by a water authority shall be his last known address, except that—
  - (a) in the case of service on a body corporate or its secretary or clerk it shall be the address of the registered or principal office of the body;
  - (b) in the case of service on a partnership or a partner or a person having the control or management of the partnership business it shall be the principal office of the partnership;and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom.
- (4) If a person to be served by virtue of this Act with any document by a water authority has specified an address within the United Kingdom other than his proper address (as determined in pursuance of the preceding subsection) as the one at which he or someone on his behalf will accept documents of the same kind as that document, that address shall also be treated as his proper address for the purposes of this section and the said section 26 in its application to this section.
- (5) If the name or address of any owner or occupier of land on whom by virtue of this Act any document is to be served by a water authority cannot after reasonable inquiry be ascertained, the document may be served either by leaving it in the hands of a person who is or appears to be resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land.
- (6) Nothing in the preceding provisions of this section relates to service of a document in proceedings in court.
- (7) This section shall not apply to Scotland.

## **96 Local inquiries**

- (1) The Secretary of State may cause a local inquiry to be held in any case in which he considers it appropriate for such an inquiry to be held either in connection with a provision of this Act or with a view to preventing or dealing with pollution or noise at any place.
- (2) Subsections (2) to (5) of section 250 of the Local Government Act 1972 (which contain supplementary provisions with respect to local inquiries held in pursuance of that section) shall, without prejudice to the generality of subsection (1) of that section, apply to inquiries in England and Wales in pursuance of the preceding subsection as they apply to inquiries in pursuance of that section but as if the reference to a local authority in subsection (4) included a reference to a water authority.

- (3) Subsections (2) to (8) of section 210 of the Local Government (Scotland) Act 1973 (local inquiries) shall, without prejudice to the generality of subsection (1) of that section, apply to inquiries in Scotland in pursuance of subsection (1) of this section as they apply to inquiries held in pursuance of that section but as if the reference to a local authority in subsection (7) included a reference to a river purification authority.

## **97 Default powers**

- (1) If the Secretary of State is satisfied that any other relevant authority has failed to perform any functions which it ought to have performed, he may make an order declaring the authority to be in default.
- (2) An order made by virtue of the preceding subsection which declares an authority to be in default may, for the purpose of remedying the default, direct the authority (hereafter in this section referred to as "the defaulting authority") to perform such of its functions as are specified in the order and may specify the manner in which and the time or times within which those functions are to be performed by the authority.
- (3) If the defaulting authority fails to comply with any direction contained in such an order the Secretary of State may, instead of enforcing the order by mandamus, make an order transferring to himself such of the functions of the authority as he thinks fit.
- (4) Where any functions of the defaulting authority are transferred in pursuance of the preceding subsection, the amount of any expenses which the Secretary of State certifies were incurred by him in performing those functions shall on demand be paid to him by the defaulting authority.
- (5) Any expenses which in pursuance of the preceding subsection are required to be paid by the defaulting authority in respect of any functions transferred in pursuance of this section shall be defrayed by the authority in the like manner, and shall be debited to the like account, as if the functions had not been transferred and the expenses had been incurred by the authority in performing them; and the authority shall have the like powers for the purpose of raising any money required in pursuance of this subsection as the authority would have had for the purpose of raising money required for defraying expenses incurred for the purposes of the functions in question.
- (6) An order transferring any functions of the defaulting authority in pursuance of subsection (3) of this section may provide for the transfer to the Secretary of State of such of the property, rights, liabilities and obligations of the authority as he considers appropriate; and where such an order is revoked the Secretary of State may, by the revoking order or a subsequent order, make such provision as he considers appropriate with respect to any property, rights, liabilities and obligations held by him for the purposes of the transferred functions.
- (7) The Secretary of State may by order vary or revoke any order previously made by him in pursuance of this section.
- (8) In this section "functions", in relation to an authority, means functions conferred on the authority by virtue of this Act.
- (9) This section shall not apply to Scotland.



## **98 Interpretation of Part V**

In this Part of this Act—

" functions " includes powers and duties ; and

" relevant authority " means—

- (a) in England and Wales, the Secretary of State, a water authority, a county council, the Greater London Council, a district council, a London borough council, the Common Council of the City of London, the Sub-Treasurer of the Inner Temple and the Under Treasurer of the Middle Temple ; and
- (b) in Scotland, the Secretary of State, a river purification authority, an islands council or a district council.