

## SCHEDULES

### SCHEDULE 26

#### TRANSITIONAL PROVISIONS AND SAVINGS

##### PART III

##### CONTROL OF POLLUTION

###### *General provisions for Chapter I of Part III of this Act*

- 21 (1) Subject to the following provisions of this Part of this Schedule, any subordinate legislation or application made, consent given or deemed to have been given, certificate issued or other thing done which is in force or effective immediately before the transfer date under or for the purposes of any provision of Part II of the 1974 Act shall have effect on and after that date—
- (a) as if it was made, given, issued or done under or for the purposes of the corresponding provision of Chapter I of Part III of this Act; and
  - (b) where it was made, given, deemed to have been given, issued or done by or in relation to a water authority, as if it was made, given, issued or done by or in relation to the Authority.
- (2) Where by virtue of this paragraph any matter falls to be determined on or after the transfer date by the Secretary of State otherwise than under paragraph 8 of Schedule 12 to this Act, that matter shall, if the Secretary of State refers the matter to the Authority for determination, be determined by the Authority instead.

###### *Order under section 32(3) of the 1974 Act*

- 22 (1) Except in so far as the Secretary of State by order otherwise provides, section 107(1) of this Act shall not apply to any discharges which are of a kind or in any area specified in an order which was made under subsection (3) of section 32 of the 1974 Act (preservation of existing exemptions) and is in force immediately before the transfer date.
- (2) The Secretary of State may by order require the Authority to publish in a manner specified in the order such information about the operation of any provision made by or under this paragraph as may be so specified; and so much of any order under the said subsection (3) as is in force immediately before the transfer date and requires a water authority to publish information shall have effect on and after that date as if it had been made by virtue of this sub-paragraph and as if that requirement were a requirement that the Authority publish the information.
- (3) The power to make an order under this paragraph shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

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*Recovery of costs under section 36(3) or 46(5) of the 1974 Act*

- 23 Nothing in this Part of this Schedule shall prejudice any provision of a scheme under Schedule 2 to this Act in accordance with which any right which accrued under section 36(3) or 46(5) of the 1974 Act (recovery of costs) to a water authority before the transfer date is transferred to the water authority's successor company.

*Existing transitional provisions*

- 24 (1) Where anything to which paragraph 21 above applies has effect immediately before the transfer date with modifications specified in regulations made under section 40 of the 1974 Act (transitional provisions), it shall continue to have effect on and after that date with those modifications notwithstanding the repeal of that section by this Act.
- (2) A consent which by virtue of section 40(4) of the 1974 Act, or of any provision of any order under section 32(3) of that Act, is deemed to have been given under that Act in respect of any application which by virtue of paragraph 21 above has effect on and after the transfer date as an application made under Schedule 12 to this Act shall cease to have effect on the disposal of that application by—
- (a) the giving of an unconditional consent on that application;
  - (b) the expiration, without an appeal under paragraph 8 of that Schedule to this Act being brought, of the period of three months beginning with the date on which notice is served on the applicant that the consent applied for is refused or is given subject to conditions; or
  - (c) the withdrawal or determination of any such appeal.
- (3) Particulars of consents to which sub-paragraph (2) above applies shall not be required to be contained in any register maintained under section 117 of this Act.

*Section 55 of the 1974 Act*

- 25 (1) Nothing in this Part of this Schedule shall have the effect of providing that any regulations made under section 55 of the 1974 Act (discharges by water authorities) continue in force after the transfer date.
- (2) Subject to sub-paragraphs (3) to (5) below, where any application has been made or other thing done by any water authority by virtue of any provision of the 1974 Act as modified by any such regulations and is pending or effective immediately before the transfer date, that application or other thing shall have effect on and after the transfer date—
- (a) so far as necessary for the purposes of, or in connection with, the allocation to the water authority's successor company by a scheme under Schedule 2 to this Act of any rights or liabilities in respect of the application or thing, as if it had been made or done by that company under the provision of Schedule 12 to this Act corresponding to the provision modified by those regulations and, where it was made or done in relation to the Secretary of State, as if it had been made or done in relation to the Authority; and
  - (b) in relation to such rights and liabilities in respect of the application or other thing as are allocated by such a scheme to the Authority, only to the extent that a saving is made in relation to that application or thing by regulations under section 113(2) of this Act.

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- (3) If the Secretary of State determines that this sub-paragraph is to apply in relation to any application which is deemed by virtue of sub-paragraph (2)(a) above to have been made by a successor company to the Authority—
- (a) that application shall be treated as having been transmitted to the Secretary of State in accordance with a direction under paragraph 4 of Schedule 12 to this Act; but
  - (b) the Authority shall not be required, by virtue of sub-paragraph (2) of that paragraph, to inform that company that the application is to be so treated.
- (4) Where an application is deemed to have been so made by a successor company, then (whether or not it is treated under sub-paragraph (3) above as having been transmitted to the Secretary of State) the following provisions shall apply in relation to the application and, except in so far as the Secretary of State otherwise directs, shall so apply instead of paragraph 1(3) to (6) or 4(3) of Schedule 12 to this Act, that is to say—
- (a) the application shall not be considered by the Secretary of State or the Authority unless the company has complied with such directions (if any) as may be given by the Secretary of State with respect to the publicity to be given to the application;
  - (b) the Secretary of State or, as the case may be, the Authority shall be under a duty to consider only such representations and objections with respect to the application as have been made in writing to the Secretary of State or the Authority before the end of such period as he may determine and as are not withdrawn; and
  - (c) the Secretary of State shall have power to direct the Authority (pending compliance with any direction under paragraph (a) above or pending his or, as the case may be, its consideration of the application, representations and objections) to give such a temporary consent under Chapter I of Part III of this Act, or to make such temporary modifications of the conditions of any existing consent, as may be specified in the direction;
- and it shall be the duty of the Authority to comply with any direction given to it by virtue of this sub-paragraph.
- (5) The power of the Secretary of State to make a determination or give a direction under sub-paragraph (3) or (4) above shall be exercisable generally in relation to applications of any such description as he may consider appropriate (as well as in relation to a particular application) and, in the case of a direction to give a temporary consent or to make a temporary modification, shall include—
- (a) power to require a temporary consent to be given either unconditionally or subject to such conditions falling within paragraph 2(3) of Schedule 12 to this Act as may be specified in the direction;
  - (b) power, where the direction relates to a description of applications, to require the temporary consent given in pursuance of the direction to be a general consent relating to cases of such a description as may be so specified; and
  - (c) power, where the direction is in respect of an application falling to be considered by the Authority, to require the consent or modification to be given or made so as to continue to have effect until the Authority's determination on the application becomes final—
    - (i) on the expiration, without the bringing of an appeal against the determination, of the prescribed period for the bringing of such an appeal; or

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(ii) on the withdrawal or determination of any such appeal;

- (6) Where any consent has been given or deemed to have been given by virtue of any provision of the 1974 Act as modified by any regulations made under section 55 of that Act and is in force immediately before the transfer date, that consent shall have effect on and after that date as if it had been given under the provision of Schedule 12 to this Act corresponding to the provision modified by those regulations, but shall so have effect—
- (a) in relation to discharges, deposits and other things done by a successor company or by the Authority, only so far as necessary for the purposes of, or in connection with, the transfer to that company or, as the case may be, the Authority in accordance with a scheme under Schedule 2 to this Act of rights and liabilities in respect of the consent; and
  - (b) in relation to the Authority, subject to any regulations under section 113(2) of this Act.
- (7) Where the rights and liabilities in respect of any such consent are transferred to a water authority's successor company in accordance with a scheme under Schedule 2 to this Act and the conditions of that consent include one or more of the following, that is to say—
- (a) a condition that requires that authority to take samples of any matter discharged;
  - (b) a condition that requires that authority to furnish any person with information about samples taken by that authority; or
  - (c) a condition that is contravened where there is a failure by more than a specified number of samples taken by that authority to satisfy specified requirements,

then any such condition as is mentioned in paragraph (a) or (b) above shall cease to have effect on the transfer date and any such condition as is mentioned in paragraph (c) above shall have effect on and after that date as if any samples taken on behalf of the Authority in exercise, at any time on or after that date, of a power conferred by this Act, but no other samples, were the samples falling to be taken into account for the purposes of that condition.

#### *Byelaws*

- 26 (1) The Secretary of State may by order provide that any byelaws specified in the order which were made by virtue of section 5(1)(c) of the Rivers (Prevention of Pollution) Act 1951 (keeping on streams and other waters of vessels provided with sanitary appliances) and are in force immediately before the transfer date shall have effect, on and after that date, with such modifications (if any) as are so specified, as if made by the Authority under section 114 of this Act.
- (2) The power to make an order under sub-paragraph (1) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### *Appeals*

- 27 Where before the transfer date any matter has been referred to the Secretary of State under section 39 of the 1974 Act (appeals) and has not been determined by him before that date, the reference of that matter shall have effect on and after that date as an appeal to him under paragraph 8 of Schedule 12 to this Act.

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*Supplemental*

- 28 (1) In this Part “the 1974 Act” means the Control of Pollution Act 1974.
- (2) Sections 123 and 124 of this Act shall apply in relation to this Part of this Schedule as they apply in relation to Chapter I of Part III of this Act.