

SCHEDULES

SCHEDULE 26

TRANSITIONAL PROVISIONS AND SAVINGS

PART IV

WATER RESOURCES

General transitional provision

- 29 (1) Without prejudice to paragraph 23(3) of Schedule 13 to this Act, any licence granted, notice given or other thing done by or in relation to a water authority under any provision of the 1963 Act, being a provision which continues in force after the transfer date, shall have effect on and after that date, in so far as the licence, notice or other thing is in force or effective immediately before that 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 which have arisen or might arise under that Act, as if it had been granted, given or done by or in relation to that company; and
 - (b) subject to paragraph (a) above, as if it had been granted, given or done by or in relation to the Authority.
- (2) Without prejudice to the generality of sub-paragraph (1) above, any subordinate legislation made under the 1963 Act which is in force immediately before the transfer date and has effect in relation to a water authority shall, subject to the provisions of that Act and any necessary modifications, have effect on and after that date in relation to the Authority as it had effect immediately before that date in relation to that water authority.
- (3) Where—
- (a) an application for a licence under the 1963 Act has been made before the transfer date to the Secretary of State by a water authority in pursuance of any regulations under section 52 of that Act (modification of Act in the case of water authority abstractions etc.); and
 - (b) that application is pending on that date and is an application the rights and liabilities in respect of which are allocated by a scheme under Schedule 2 to this Act to the water authority's successor company,
- the Secretary of State shall refer that application to the Authority to be determined on or after that date as if it were an application made to the Authority under that Act and may direct, in relation to such an application, that specified requirements of that Act with respect to procedure and publicity are not to apply, or are to be deemed to have been complied with if the requirements set out in the direction are complied with.

Status: This is the original version (as it was originally enacted).

- (4) Subject to sub-paragraph (1) above, a licence of right, within the meaning of the 1963 Act, which is in force under that Act immediately before the transfer date shall continue in force under that Act on and after that date notwithstanding the repeals made by this Act.

Section 24(2) and (3) of the 1963 Act

- 30 (1) Subject to the following provisions of this paragraph, where a person—
- (a) has, in pursuance of section 24(2) or (3) of the 1963 Act, abstracted water from a source of supply at any time within the period of five years ending with the transfer date; and
 - (b) establishes to the reasonable satisfaction of the Authority, on an application made at any time before the coming into force of the amendment made by sub-paragraph (3) or (4) of paragraph 6 of Schedule 13 to this Act, that his requirements involve such abstractions of water after the coming into force of that amendment from that source of supply as are required to be licensed under that Act by reason only of that amendment,
- that person shall be entitled to the grant by the Authority of such a licence under the 1963 Act as will authorise those abstractions.
- (2) Subject to the following provisions of this paragraph, any quantity specified in a licence granted by virtue of this paragraph as a quantity of water authorised to be abstracted in pursuance of the licence during a period or periods so specified shall be determined by reference to the requirements of the applicant.
- (3) For the purposes of sub-paragraphs (1) and (2) above the requirements of an applicant for the grant by virtue of this paragraph of a licence under the 1963 Act shall be those indicated by (and shall not, except by virtue of sub-paragraph (4) below, be taken to exceed) the quantities of water established to the reasonable satisfaction of the Authority—
- (a) to have been abstracted, in pursuance of section 24(2) or (3) of the 1963 Act, from the source of supply in question by the applicant, or any of his predecessors, from time to time during the relevant period; and
 - (b) to have been so abstracted for use on the land on which, and for the purposes for which, water abstracted in pursuance of the licence is authorised by the licence to be used.
- (4) In determining any person's requirements for the purposes of sub-paragraph (1) or (2) above or the period or other terms to be specified in a licence granted by virtue of this paragraph the Authority shall have regard to such of the following matters as are established to its reasonable satisfaction (in addition to the quantities of water established to have been abstracted as mentioned in sub-paragraph (3) above), that is to say—
- (a) the provisions of any local statutory provision or agreement in accordance with which those quantities of water have been abstracted as so mentioned during the relevant period;
 - (b) any variations according to the seasons of the year in the quantities of water abstracted as so mentioned during the relevant period;
 - (c) the extent to which the abstraction of water has been or would have been limited during the relevant period to special occasions when, by reason of accident or other emergency, there was a temporary deficiency of water from other sources of supply;

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- (d) the extent to which works, machinery or apparatus were reasonably provided by the applicant or any of his predecessors in anticipation of future requirements.
- (5) Any provision made by a licence granted by virtue of this paragraph as to the quantity of water authorised to be abstracted shall be such as will not permit the abstraction of water in excess of the quantity established to the reasonable satisfaction of the Authority to be capable of being abstracted by means of works, machinery or apparatus which—
 - (a) were constructed or installed before the transfer date; or
 - (b) were in the course of being constructed or installed on that date,not being (in either case) works, machinery or apparatus provided for use only in the event of an accident or other emergency involving a total or partial failure of other works, machinery or apparatus.
- (6) Nothing in—
 - (a) sections 27 to 29 or 38 of the 1963 Act (applications for licences);
 - (b) any regulations under section 54(3) of that Act (applications in respect of National Parks); or
 - (c) section 131(2) of that Act (applications by the British Waterways Board),shall apply in relation to an application for the grant of a licence by virtue of this paragraph; but, save as aforesaid and subject to the following provisions of this Part of this Schedule, that Act shall have effect as if such an application were an application under that Act.
- (7) The preceding provisions of this paragraph, and not section 41(5) of the 1963 Act (procedure on appeal to the Secretary of State), shall apply, as they apply in relation to an application to the Authority for the grant of a licence by virtue of this paragraph, in relation to an appeal under section 39 of that Act in respect of a decision on such an application; but in their application in relation to any such appeal the preceding provisions of this paragraph shall have effect as if in those provisions—
 - (a) references to the Authority were references to the Secretary of State; and
 - (b) the requirement in sub-paragraph (1)(b) above as to the period within which an application must be made applied to the application the decision on which is the subject-matter of the appeal (rather than to the appeal itself).
- (8) Nothing in—
 - (a) section 46(3) of the 1963 Act (compensation for revocation or variation confined to work carried out after grant of licence); or
 - (b) section 47 of that Act (application by owner of fishing rights for revocation or variation of licence),shall apply in relation to a licence granted by virtue of this paragraph; but, save as aforesaid and subject to sub-paragraphs (6) and (7) above and the following provisions of this Part of this Schedule, that Act shall apply in relation to any such licence as it applies in relation to any other licence under that Act.
- (9) For the purposes of this paragraph water abstracted by the former incumbent of a benefice (within the meaning of section 132 of the 1963 Act) shall be treated as having been abstracted by the person who is for the time being the incumbent thereof or, if the benefice is vacant, by the Church Commissioners.

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(10) No application for the grant of a licence by virtue of this paragraph shall be made in respect of any abstraction which is the subject of such a contract of sale as is mentioned in paragraph 31 below; and no licence may be granted by virtue of this paragraph in relation to any waters to which section 131 of the 1963 Act (waters owned or managed by the British Waterways Board) applies unless—

- (a) the application for the licence was accompanied by the prescribed evidence that notice of the application was served on the British Waterways Board; and
- (b) the Authority has considered any representations or objections made by that Board within the period of twenty-eight days beginning with the day on which the application was made or such longer period as the Authority may allow.

Waters owned or managed by the British Waterways Board

31 (1) Where the British Waterways Board establishes to the reasonable satisfaction of the Authority, on an application made before the coming into force of the amendment made by sub-paragraph (3) of paragraph 6 of Schedule 13 to this Act—

- (a) that a contract for the sale of water by that Board to any other person has been entered into at any time before the coming into force of that amendment; and
- (b) that that contract requires or authorises such an abstraction of any water from any inland water to which section 131 of the 1963 Act (inland waters owned or managed by the British Waterways Board) applies as is required to be licensed under that Act by reason only of that amendment,

that Board shall be entitled to the grant by the Authority of such a licence under the 1963 Act as will authorise the abstraction required or authorised by that contract.

(2) Nothing in—

- (a) sections 27 to 29 or 38 of the 1963 Act (applications for licences); or
- (b) any regulations under section 54(3) of that Act (applications in respect of National Parks),

shall apply in relation to an application for the grant of a licence by virtue of this paragraph; but, save as aforesaid and subject to the following provisions of this Part of this Schedule, that Act shall have effect as if such an application were an application under that Act.

(3) The preceding provisions of this paragraph, and not section 41(5) of the 1963 Act (procedure on appeal to the Secretary of State), shall apply, as they apply in relation to an application to the Authority for the grant of a licence by virtue of this paragraph, in relation to an appeal under section 39 of that Act in respect of a decision on such an application; but in their application in relation to any such appeal the preceding provisions of this paragraph shall have effect as if in those provisions—

- (a) references to the Authority were references to the Secretary of State; and
- (b) the requirement in sub-paragraph (1) above as to the period within which an application must be made applied to the application the decision on which is the subject-matter of the appeal (rather than to the appeal itself).

(4) Nothing in—

- (a) section 46(3) of the 1963 Act (compensation for revocation or variation confined to work carried out after grant of licence); or

- (b) section 47 of that Act (application by owner of fishing rights for revocation or variation of licence),

shall apply in relation to a licence under that Act granted by virtue of this paragraph; but, save as aforesaid and subject to sub-paragraphs (2) and (3) above and the following provisions of this Part of this Schedule, that Act shall apply in relation to any such licence as it applies in relation to any other licence under that Act.

Transitional provision in respect of licences under paragraph 30 or 31

- 32 (1) Where an application for the grant of a licence by virtue of paragraph 30 or 31 above is made before the end of the period within which such an application is required to be made under that paragraph, then—
- (a) sections 23, 26, 31 and 49 of the 1963 Act and Part II of the Gas Act 1965 shall have effect, until the application is disposed of, as if the licence had been granted on the date of the application and the provisions of the licence had been in accordance with the proposals contained in the application; and
 - (b) for the purposes of those sections and Part II of the said Act of 1965 any licence granted on the application shall be treated as not having effect until the application has been disposed of.
- (2) Subsection (1) of section 31 of the 1963 Act (effect of licence) shall not afford any defence to an action brought before the end of the period of three years beginning with the transfer date if the licence referred to in that subsection is a licence granted by virtue of paragraph 30 or 31 above; and that subsection as applied by sub-paragraph (1) above shall not afford any defence to such an action.
- (3) No compensation shall be payable under section 46 of the 1963 Act (compensation for revocation or variation of a licence) in respect of the revocation or variation of a licence granted by virtue of paragraph 30 or 31 above if the revocation or variation is for giving effect to the decision of the court in an action in respect of which sub-paragraph (2) above has effect or in any proceedings in consequence of such an action.
- (4) For the purposes of this paragraph an application for the grant of a licence by virtue of paragraph 30 or 31 above shall be taken to be disposed of on (but not before) the occurrence of whichever of the following events last occurs, that is to say—
- (a) the grant, on the determination of the application by the Authority, of a licence the provisions of which are in accordance with the proposals contained in the application;
 - (b) the expiry, without a notice of appeal having been given, of the period (if any) within which the applicant is entitled to give notice of appeal against the decision on the application;
 - (c) the determination or withdrawal of an appeal against that decision;
 - (d) the grant, variation or revocation, in compliance with a direction given by the Secretary of State in consequence of such an appeal, of a licence under the 1963 Act;
- and in this sub-paragraph any reference to a decision includes a reference to a decision which is to be treated as having been made by virtue of section 40 of that Act (appeal in default of decision).

Status: This is the original version (as it was originally enacted).

*Actions against the Authority in respect of rights
protected by licences under paragraph 30 or 31*

- 33 (1) Section 50(2) of the 1963 Act (action against the Authority where Authority acts on direction of the Secretary of State) shall not apply to a direction given in consequence of an appeal against the decision of the Authority on an application for the grant of a licence under that Act by virtue of paragraph 30 or 31 above.
- (2) Where the plaintiff in any action brought against the Authority at any time after the transfer date in pursuance of section 50(1) of the 1963 Act (action in respect of licences derogating from protected rights) is entitled to a protected right under the 1963 Act by reason only that he is the holder of a licence granted by virtue of paragraph 30 or 31 above or has applied for a licence to be so granted, it shall be a defence for the Authority to show—
- (a) that the plaintiff could have carried out permissible alterations in the means whereby he abstracted water from the source of supply in question; and
 - (b) that, if he had carried out such alterations, the abstraction (or, as the case may be, the obstruction or impeding of the flow of the inland water) authorised by the licence to which the action relates would not have derogated from his protected right under that Act.
- (3) In sub-paragraph (2) above “permissible alterations”—
- (a) in relation to a person who is the holder of a licence granted by virtue of paragraph 30 or 31 above, means any alteration of works, or modification of machinery or apparatus, which would fulfil the requirements of the licence as to the means whereby water is authorised to be abstracted;
 - (b) in relation to a person who is not the holder of such a licence but has applied for one as being entitled to it by virtue of that paragraph, means any alteration of the works, or modification of the machinery or apparatus, by means of which he abstracted water from the source of supply in question during the period of five years ending with the transfer date, being an alteration or modification which would be within the scope of the licence if granted in accordance with the application.

Saving for the Drought Act 1976

- 34 The repeal by this Act of the Drought Act 1976 shall not affect—
- (a) any order under that Act which is in force immediately before the transfer date;
 - (b) any power to make an order under that Act on an application (whether made before, on or after that date) of which notice was given before that date; or
 - (c) the operation of the provisions of that Act in relation to any such order or application;
- but, in relation to any time on or after that date, that Act and anything done under it shall have effect by virtue of this paragraph as if references to a water authority were references to the successor company of that water authority.

Interpretation of Part IV

- 35 (1) In this Part of this Schedule—
- “the 1963 Act” means the Water Resources Act 1963;

“contract for the sale of water”, in relation to the British Waterways Board, includes any arrangements by virtue of which the Board, for valuable consideration, abstracts or authorises the abstraction of water from any inland water for use by some other person, whether or not the water is returned after use;

“the relevant period”, in relation to an application or appeal by virtue of paragraph 30 above, means whichever is the shorter of—

- (a) the period of five years ending with the transfer date; and
- (b) the period beginning with the date on which the applicant or any of his predecessors began to abstract water from the source of supply in question and ending with the transfer date.

- (2) Expressions used in this Part of this Schedule and in the 1963 Act have the same meanings in this Part as in that Act.