



# Water Industry Act 1991

## 1991 CHAPTER 56

### PART IV

#### SEWERAGE SERVICES

#### CHAPTER III

#### TRADE EFFLUENT

#### *Supplemental provisions of Chapter III*

#### **135 Restrictions on power to fix charges under Chapter III.**

- (1) On any appeal under section 122 or 126(1) above conditions providing for the payment of charges to the sewerage undertaker in question shall not be determined by the Director except in so far as no provision is in force by virtue of a charges scheme under section 143 below in respect of any such receptions, discharges, removals or disposals of effluent or substances as are of the same description as the reception, discharge, removal or disposal which is the subject-matter of the appeal.
- (2) In so far as any such conditions as are mentioned in subsection (1) above do fall to be determined by the Director, they shall be determined having regard to the desirability of that undertaker's—
  - (a) recovering the expenses of complying with its obligations in consequence of the consent or agreement to which the conditions relate; and
  - (b) securing a reasonable return on its capital.
- (3) To the extent that subsection (1) above excludes any charges from a determination on an appeal those charges shall be fixed from time to time by a charges scheme under section 143 below but not otherwise.

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**[135A <sup>F1</sup>Power of the [<sup>F2</sup>appropriate agency] to acquire information for the purpose of its functions in relation to special category effluent.**

- (1) For the purpose of the discharge of its functions under this Chapter, the [<sup>F3</sup>appropriate agency] may, by notice in writing served on any person, require that person to furnish such information specified in the notice as [<sup>F4</sup>that appropriate agency] reasonably considers it needs, in such form and within such period following service of the notice, or at such time, as is so specified.
- (2) A person who—
- (a) fails, without reasonable excuse, to comply with a requirement imposed under subsection (1) above, or
  - (b) in furnishing any information in compliance with such a requirement, makes any statement which he knows to be false or misleading in a material particular, or recklessly makes a statement which is false or misleading in a material particular,
- shall be guilty of an offence.
- (3) A person guilty of an offence under subsection (2) above 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** S. 135A inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 113** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F2** Words in s. 135A heading substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 247(3)** (with Sch. 7)
- F3** Words in s. 135A(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 247(2)(a)** (with Sch. 7)
- F4** Words in s. 135A(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 247(2)(b)** (with Sch. 7)

**136 Evidence from meters etc.**

Any meter or apparatus provided in pursuance of this Chapter in any trade premises for the purpose of measuring, recording or determining the volume, rate of discharge, nature or composition of any trade effluent discharged from those premises shall be presumed in any proceedings to register accurately, unless the contrary is shown.

**137 Statement of case on appeal.**

- (1) At any stage of the proceedings on an appeal under section 122 or 126(1) above, the Director may, and if so directed by the High Court shall, state in the form of a special case for the decision of the High Court any question of law arising in those proceedings.
- (2) The decision of the High Court on a special case under this section shall be deemed to be a judgment of the Court within the meaning of section 16 of the [<sup>F5</sup>Senior Courts Act 1981](which relates to the jurisdiction of the Court of Appeal); but no appeal to

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the Court of Appeal shall be brought by virtue of this subsection except with the leave of the High Court or of the Court of Appeal.

#### Textual Amendments

- F5** Words in s. 137(2) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 59, 148\(1\), Sch. 11 para. 1\(2\); S.I. 2009/1604, art. 2\(d\)](#)

### 138 Meaning of “special category effluent”.

- (1) Subject to <sup>F6</sup>subsections (1A) and] (2) below, trade effluent shall be special category effluent for the purposes of this Chapter if—
- (a) such substances as may be prescribed under this Act are present in the effluent or are present in the effluent in prescribed concentrations; or
  - (b) the effluent derives from any such process as may be so prescribed or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts.

<sup>F7</sup>(1A) If trade effluent is produced, or to be produced, by operating <sup>F8</sup>any Part A installation or Part A mobile plant or otherwise carrying on any Part A activity] , the operation or carrying on of which requires a permit, that effluent shall not be special category effluent for the purposes of this Chapter as from the determination date relating to the installation, plant or activity in question.

(1B) In subsection (1A)—

- (a) “determination date”, in relation to an installation, plant or activity, means—
  - (i) in the case of an installation, plant or activity in relation to which a permit is granted, the date on which it is granted, whether in pursuance of the application, or on an appeal, of a direction to grant it;
  - (ii) in the case of an installation, plant or activity in relation to which the grant of a permit is refused, the date of refusal or, on appeal, of the affirmation of the refusal,

and in this paragraph the references to an appeal are references to an appeal under <sup>F9</sup>the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154)];

- <sup>F10</sup>(aa) [ the expressions “Part A activity”, “Part A installation” and “Part A mobile plant” have the same meaning as in <sup>F11</sup>those Regulations];
- (b) “permit” means a permit <sup>F12</sup>granted under <sup>F13</sup>those Regulations]].]

- (2) Trade effluent shall not be special category effluent for the purposes of this Chapter if it is produced, or to be produced, in any process which is a prescribed process designated for central control as from the date which is the determination date for that process.
- (3) In subsection (2) above “determination date”, in relation to a prescribed process, means—
- (a) in the case of a process for which authorisation is granted, the date on which the enforcing authority grants it, whether in pursuance of the application or, on an appeal, of a direction to grant it;
  - (b) in the case of a process for which authorisation is refused, the date of refusal or, on appeal, of the affirmation of the refusal.
- (4) <sup>F14</sup>In subsection (2) and (3) above]—

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- (a) “authorisation”, “enforcing authority” and “prescribed process” have the meanings given by section 1 of the <sup>M1</sup>Environmental Protection Act 1990; and
  - (b) the references to designation for central control and to an appeal are references, respectively, to designation under section 4 of that Act and to an appeal under section 15 of that Act.
- (5) Without prejudice to the power in subsection (3) of section 139 below, nothing in this Chapter shall enable regulations under this section to prescribe as special category effluent any liquid or matter which is not trade effluent but falls to be treated as such for the purposes of this Chapter by virtue of an order under that section.

#### Textual Amendments

- F6** Words in s. 138(1) substituted (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 8(a)**
- F7** S. 138(1A)(1B) inserted (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 8(b)**
- F8** Words in s. 138(1A) substituted (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 20(2)**
- F9** Words in s. 138(1B)(a) substituted (1.1.2017) by The Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154), reg. 1(1), **Sch. 29 para. 8(3)** (with regs. 1(3), 77-79, Sch. 4)
- F10** S. 138(1B)(aa) inserted (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 20(4)**
- F11** Words in s. 138(1B)(aa) substituted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 7(b)** (with reg. 1(2), Sch. 4)
- F12** Words in s. 138(1B)(b) substituted (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 20(5)**
- F13** Words in s. 138(1B)(b) substituted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 7(b)** (with reg. 1(2), Sch. 4)
- F14** Words in s. 138(4) substituted (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 8(c)**

#### Marginal Citations

- M1** 1990 c. 43.

### 139 Power to apply Chapter III to other effluents.

- (1) The Secretary of State may by order provide that, subject to section 138(5) above, this Chapter shall apply in relation to liquid or other matter of any description specified in the order which is discharged into public sewers as it applies in relation to trade effluent.
- (2) An order applying the provisions of this Chapter in relation to liquid or other matter of any description may provide for it to so apply subject to such modifications (if any) as may be specified in the order and, in particular, subject to any such modification of the meaning for the purposes of this Chapter of the expression “trade premises” as may be so specified.
- (3) The Secretary of State may include in an order under this section such provisions as appear to him expedient for modifying any enactment relating to sewage as that enactment applies in relation to the discharge into sewers of any liquid or other matter to which any provisions of this Chapter are applied by an order under this section.
- (4) The Secretary of State may include in an order under this section such other supplemental, incidental and transitional provision as appears to him to be expedient.

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- (5) The power to make an order under this section shall be exercisable by statutory instrument; and no order shall be made under this section unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

#### **140 Pre-1989 Act authority for trade effluent discharges etc.**

Schedule 8 to this Act shall have effect (without prejudice to the provisions of the <sup>M2</sup>Water Consolidation (Consequential Provisions) Act 1991 or to sections 16 and 17 of the <sup>M3</sup>Interpretation Act 1978) for the purpose of making provision in respect of certain cases where trade effluent was discharged in accordance with provision made before the coming into force of the <sup>M4</sup>Water Act 1989.

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#### **Marginal Citations**

**M2** 1991 c. 60.

**M3** 1978 c. 30.

**M4** 1989 c. 15.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 3 Ch. 2B inserted by [2014 c. 21 s. 12](#)
- s. 17(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 4(4)(b) (as substituted) by S.I. [2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17A(c) repealed by [2014 c. 21 Sch. 5 para. 4\(2\)\(c\)](#)
- s. 17A(d) repealed by [2014 c. 21 Sch. 5 para. 4\(2\)\(c\)](#)
- s. 17A(2)(ba) and word inserted by [2014 c. 21 Sch. 5 para. 4\(2\)\(b\)](#)
- s. 17R(2)(aa) inserted by S.I. 2019/93, Sch. 1 para. 4(7)(b) (as substituted) by S.I. [2019/1245 reg. 21](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 17AA(1)(ba)(bb) inserted by [2014 c. 21 Sch. 5 para. 5\(2\)](#)
- s. 17BA(5A) inserted by [2014 c. 21 Sch. 5 para. 7\(3\)](#)
- s. 17HA(9)(b)(ia) inserted by [2014 c. 21 Sch. 5 para. 16\(2\)](#)
- s. 23(2AA) inserted by [2014 c. 21 Sch. 7 para. 35\(4\)](#)
- s. 23(8)(9) inserted by [2014 c. 21 Sch. 7 para. 35\(10\)](#)
- s. 39E-39H inserted by [2021 c. 30 s. 78\(7\)](#)
- s. 87(7C)-(7F) inserted by [2012 c. 7 s. 35\(6\)](#)
- s. 94A-94E inserted by [2021 c. 30 s. 79](#)
- s. 95ZA(6) inserted by [2014 c. 21 Sch. 5 para. 39\(4\)](#)
- s. 96ZA(2)-(5) substituted for s. 96ZA(2) by [2014 c. 21 Sch. 5 para. 40](#)
- s. 106B(3A) inserted by [2014 c. 21 Sch. 7 para. 94](#)
- s. 117G(2)(aa) inserted by [2014 c. 21 Sch. 5 para. 41\(2\)](#)
- s. 117G(4)-(4D) substituted for s. 117(4) by [2014 c. 21 Sch. 5 para. 41\(3\)](#)
- s. 117G(6)(aa) inserted by [2014 c. 21 Sch. 5 para. 41\(4\)](#)
- s. 117K(2)(aa) inserted by [2014 c. 21 Sch. 5 para. 42\(2\)](#)
- s. 117K(5)(5A) substituted for s. 117(5) by [2014 c. 21 Sch. 5 para. 42\(3\)](#)
- s. 117L(9) inserted by [2014 c. 21 Sch. 5 para. 43\(3\)](#)
- s. 117N(4)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(2\)](#)
- s. 117N(8)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(3\)](#)
- s. 117N(11)(aa) inserted by [2014 c. 21 Sch. 5 para. 45\(4\)](#)
- s. 117O(4)(aa) inserted by [2014 c. 21 Sch. 5 para. 46\(2\)](#)
- s. 117O(8)(aa) inserted by [2014 c. 21 Sch. 5 para. 46\(3\)](#)
- s. 117S(7)-(9) inserted by [2014 c. 21 Sch. 5 para. 49](#)
- s. 119(2)(ab) inserted by [2003 c. 37 s. 89\(1\)\(a\)](#)
- s. 119(3) inserted by [2003 c. 37 s. 89\(1\)\(b\)](#)
- s. 121(1)(ba) inserted by [2003 c. 37 s. 89\(2\)\(a\)](#)
- s. 141DA inserted by [2021 c. 30 s. 81](#)
- s. 141DC inserted by [2021 c. 30 s. 83](#)
- s. 177K(7)(aa) inserted by [2014 c. 21 Sch. 5 para. 42\(4\)](#)
- s. 207D and cross-heading inserted by [2014 c. 21 s. 39](#)
- s. 207D(5) word repealed by [2014 c. 21 Sch. 5 para. 52\(a\)](#)

- s. 207D(5) words inserted by 2014 c. 21 Sch. 5 para. 52(b)
- s. 213(1ZA) inserted by 2014 c. 21 Sch. 7 para. 119(3)
- s. 213(1ZA) repealed by 2014 c. 21 Sch. 5 para. 53