



# Water Resources Act 1991

## 1991 CHAPTER 57

### PART I

#### PRELIMINARY

#### CHAPTER I

##### THE NATIONAL RIVERS AUTHORITY

**F1** .....

#### Textual Amendments

**F1** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F2** .....

#### Textual Amendments

**F2** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F3** .....

*Status: Point in time view as at 01/04/2005.*

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Textual Amendments

F3 Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F44 .....

Textual Amendments

F4 Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F55 .....

Textual Amendments

F5 Ss. 1-14 repealed (1.4.1996) by 1996 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

CHAPTER II

COMMITTEES WITH FUNCTIONS IN RELATION TO THE AUTHORITY

Advisory committees

F66 .....

Textual Amendments

F6 Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F77 .....

Textual Amendments

F7 Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F88 .....

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Textual Amendments

**F8** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

*Flood defence committees*

**F9** 9 .....

Textual Amendments

**F9** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F10** 10 .....

Textual Amendments

**F10** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F11** 11 .....

Textual Amendments

**F11** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F12** 12 .....

Textual Amendments

**F12** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F13** 13 .....

Textual Amendments

**F13** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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<sup>F14</sup>14 .....

Textual Amendments

**F14** Ss. 1-14 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 129, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

CHAPTER III

GENERAL DUTIES

**15 General duties with respect to the water industry.**

- (1) It shall be the duty of the [<sup>F15</sup>Agency], in exercising any of its powers under any enactment, to have particular regard to the duties imposed, by virtue of the provisions of Parts II to IV of the <sup>M1</sup>Water Industry Act 1991, on any water undertaker or sewerage undertaker which appears to the [<sup>F15</sup>Agency] to be or to be likely to be affected by the exercise of the power in question.
- (2) It shall be the duty of each of the Ministers, in exercising—
- (a) any power conferred by virtue of [<sup>F16</sup>the 1995 Act,]this Act, the <sup>M2</sup>Land Drainage Act 1991, the Water Industry Act 1991 or the <sup>M3</sup>Water Act 1989 in relation to, or to decisions of, the [<sup>F15</sup>Agency]; or
  - (b) any power which, but for any direction given by one of the Ministers, would fall to be exercised by the [<sup>F15</sup>Agency],
- to take into account the duty imposed on the [<sup>F15</sup>Agency] by subsection (1) above.

Textual Amendments

**F15** Word in s. 15 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F16** Words in s. 15(2)(a) substituted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 130** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

Marginal Citations

**M1** 1991 c. 56.  
**M2** 1991 c. 59.  
**M3** 1989 c. 15.

<sup>F17</sup>16 .....

Textual Amendments

**F17** Ss. 16-19 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 131, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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<sup>F18</sup>**17** .....

**Textual Amendments**

**F18** Ss. 16-19 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22, para. 131, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

<sup>F19</sup>**18** .....

**Textual Amendments**

**F19** Ss. 16-19 repealed (1.4.1996) by 1995 c. 25, **s. 120**, Sch. 22, para. 131, Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**PART II**

**WATER RESOURCES MANAGEMENT**

**Modifications etc. (not altering text)**

**C1** Pt. II: transfer of functions to the Environment Agency (1.4.1996) by 1995 c. 25, **s. 2(1)(a)(i)** (with ss. 115, 117); S.I. 1996/186, **art. 3**

**CHAPTER I**

**GENERAL MANAGEMENT FUNCTIONS**

**19 General management of resources by the [<sup>F20</sup>Agency.]**

- (1) It shall be the duty of the [<sup>F21</sup>Agency] to take all such action as it may from time to time consider, in accordance (if any have been given for the purposes of this section) with the directions of the Secretary of State, to be necessary or expedient for the purpose—
- (a) of conserving, redistributing or otherwise augmenting water resources in England and Wales; and
  - (b) of securing the proper use of water resources in England and Wales.
- (2) Nothing in this section shall be construed as relieving any water undertaker of the obligation to develop water resources for the purpose of performing any duty imposed on it by virtue of section 37 of the <sup>M4</sup>Water Industry Act 1991 (general duty to maintain water supply system).

**Textual Amendments**

**F20** Words in s. 19 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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**F21** Words in s. 19 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M4** 1991 c. 56.

## 20 Water resources management schemes.

- (1) It shall be the duty of the [<sup>F22</sup>Agency] so far as reasonably practicable to enter into and maintain such arrangements with water undertakers for securing the proper management or operation of—
  - (a) the waters which are available to be used by water undertakers for the purposes of, or in connection with, the carrying out of their functions; and
  - (b) any reservoirs, apparatus or other works which belong to, are operated by or are otherwise under the control of water undertakers for the purposes of, or in connection with, the carrying out of their functions,
 as the [<sup>F22</sup>Agency] from time to time considers appropriate for the purpose of carrying out its functions under [<sup>F23</sup>section 6(2) of the 1995 Act].
- (2) Without prejudice to the power of the [<sup>F22</sup>Agency] and any water undertaker to include any such provision as may be agreed between them in arrangements under this section, such arrangements may—
  - (a) make provision by virtue of subsection (1)(a) above with respect to the construction or installation of any reservoirs, apparatus or other works which will be used by the undertaker in the carrying out of its functions;
  - (b) contain provision requiring payments to be made by the [<sup>F22</sup>Agency] to the undertaker; and
  - (c) require the reference to and determination by the Secretary of State or the Director General of Water Services of questions arising under the arrangements.
- (3) The [<sup>F22</sup>Agency] shall send a copy of any arrangements entered into by it under this section to the Secretary of State; and the obligations of a water undertaker by virtue of any such arrangements shall be enforceable under section 18 of the <sup>M5</sup>Water Industry Act 1991 (enforcement orders) by the Secretary of State.

#### Textual Amendments

**F22** Words in s. 20 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F23** Words in s. 20(1) substituted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 132** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M5** 1991 c. 56

## [<sup>F24</sup>20A Water resources management schemes: other abstractors

- (1) The Agency may enter into and maintain such arrangements with holders of abstraction licences other than water undertakers for securing the proper management or operation of—

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- (a) the waters from which they have the right by virtue of their licences to abstract water; and
  - (b) any reservoirs, apparatus or other works which are used for the purposes of or in connection with their abstractions and which belong to them, are operated by them or are otherwise under their control,as the Agency from time to time considers appropriate for the purpose of carrying out its functions under section 6(2) of the 1995 Act.
- (2) Without prejudice to the power of the Agency and any holder of an abstraction licence to include any such provision as may be agreed between them in arrangements under this section, such arrangements may—
  - (a) make provision by virtue of subsection (1)(a) above with respect to the construction or installation of any reservoirs, apparatus or other works which the holder of the licence will use for the purposes of or in connection with his abstraction;
  - (b) contain provision requiring payments to be made by the Agency to the holder of the licence; and
  - (c) require the reference to and determination by the Secretary of State or the Water Services Regulation Authority of questions arising under the arrangements.
- (3) The Agency shall send a copy of any arrangements entered into by it under this section to the Secretary of State.
- (4) In this section, references to abstraction licences are to licences under Chapter 2 of this Part to abstract water.]

#### Textual Amendments

**F24** S. 20A inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 28, 105(3); S.I. 2004/2528, art. 2(b) (with [Sch. para. 8](#))

### [<sup>F25</sup> 20B Water resources management schemes: referral to Secretary of State

- (1) This section applies where—
  - (a) the Agency has sought to enter into arrangements acceptable to it under section 20 or 20A above, but is satisfied that the other party is unwilling to enter into such arrangements or to do so on terms appearing to the Agency to be reasonable; or
  - (b) having entered into such arrangements, the Agency has sought to renew or vary them but is satisfied that the other party is unwilling to do so or to do so on terms appearing to the Agency to be reasonable.
- (2) Where this section applies, the Agency may refer to the Secretary of State the question (as the case may be)—
  - (a) whether such arrangements should be entered into, and if so, on what terms; or
  - (b) whether the arrangements should be renewed or varied (as the case may be), and if so, on what terms.
- (3) If the Secretary of State determines that arrangements should be entered into or (as the case may be) renewed or varied, such arrangements on the terms determined by the Secretary of State shall be enforceable—

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- (a) by civil proceedings by the Secretary of State for an injunction or for any other appropriate relief; and
  - (b) where the other party is a water undertaker, also under section 18 of the Water Industry Act 1991 (enforcement orders) by the Secretary of State.
- (4) The functions of the Secretary of State under subsection (2) above shall be treated for the purposes of section 114 of the 1995 Act (delegation or reference of appeals) as if they were functions to which paragraph (a) of subsection (1) of that section applied.]

#### Textual Amendments

**F25** S. 20B inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 29(1)**, 105(3); S.I. 2004/2528, art. 2(b) (with [Sch. para. 8](#))

### [<sup>F26</sup> 20C Proposals for bulk supply arrangements

- (1) In the circumstances mentioned in subsection (2) below, the Agency may, in carrying out its functions under section 6(2) of the 1995 Act, propose to a qualifying person (within the meaning of section 40 of the Water Industry Act 1991) that he make an application under that section for a bulk supply of water from a water undertaker.
- (2) The circumstances referred to in subsection (1) above are that it appears to the Agency that such a bulk supply is necessary in order to secure the proper use of water resources.
- (3) The Agency shall not make such a proposal without first consulting the Water Services Regulation Authority.
- (4) The Agency may include in its proposal the period for which, and terms and conditions on which, the Agency considers it appropriate that the bulk supply should be given.]

#### Textual Amendments

**F26** S. 20C inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 31(1)**, 105(3); S.I. 2004/2528, art. 2(c) (with [Sch. para. 8](#))

## 21 Minimum acceptable flows.

- (1) The [<sup>F27</sup>Agency] may, if it thinks it appropriate to do so, submit a draft statement to the Secretary of State containing, in relation to any inland waters that are not discrete waters—
  - (a) provision for determining the minimum acceptable flow for those waters; or
  - (b) where any provision for determining such a flow is for the time being in force in relation to those waters, provision for amending that provision or for replacing it with different provision for determining the minimum acceptable flow for those waters.
- (2) The provision contained in any statement for determining the minimum acceptable flow for any inland waters shall, in relation to the inland waters to which it relates, set out—
  - (a) the control points at which the flow in the waters is to be measured;
  - (b) the method of measurement which is to be used at each control point; and

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- (c) the flow which is to be the minimum acceptable flow at each control point or, where appropriate, the flows which are to be the minimum acceptable flows at each such point for the different times or periods specified in the statement.
- (3) Before preparing so much of any draft statement under this section as relates to any particular inland waters, the [F27Agency] shall consult—
  - (a) any water undertaker having the right to abstract water from those waters;
  - (b) any other water undertaker having the right to abstract water from any related underground strata;
  - (c) the drainage board for any internal drainage district from which water is discharged into those waters or in which any part of those waters is situated;
  - (d) any navigation authority, harbour authority or conservancy authority having functions in relation to those waters or any related inland waters;
  - (e) if those waters [F28are wholly or partly situated in Wales (or in an area of the sea adjoining either the coast of Wales or an area of sea forming part of Wales) and they] or any related inland waters are tidal waters in relation to which there is no such navigation authority, harbour authority or conservancy authority, [F29the Secretary of State for Transport]; and
  - (f) any person authorised by a licence under Part I of the M6Electricity Act 1989 to generate electricity [F30who has a right to abstract water from those waters].
- (4) In determining the flow to be specified in relation to any inland waters under subsection (2)(c) above, the [F27Agency] shall have regard—
  - (a) to the flow of water in the inland waters from time to time;
  - (b) in the light of its duties under [F31sections 6(1), 7 and 8 of the 1995 Act], to the character of the inland waters and their surroundings; and
  - (c) to any water quality objectives established under Chapter I of Part III of this Act in relation to the inland waters or any other inland waters which may be affected by the flow in the inland waters in question.
- (5) The flow specified in relation to any inland waters under subsection (2)(c) above shall be not less than the minimum which, in the opinion of the [F27Agency], is needed for safeguarding the public health and for meeting (in respect of both quantity and quality of water)—
  - (a) the requirements of existing lawful uses of the inland waters, whether for agriculture, industry, water supply or other purposes; and
  - (b) the requirements, in relation to both those waters and other inland waters whose flow may be affected by changes in the flow of those waters, of navigation, fisheries or land drainage.
- (6) The provisions of Schedule 5 to this Act shall have effect with respect to draft statements under this section and with respect to the approval of statements submitted as draft statements.
- (7) The approval under Schedule 5 to this Act of a draft statement under this section shall bring into force, on the date specified in that approval, so much of that statement, as approved, as contains provision for determining, amending or replacing the minimum acceptable flow for any inland waters.
- (8) For the purposes of subsection (3) above—
  - (a) underground strata are related underground strata in relation to any inland waters if—

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- (i) a water undertaker has a right to abstract water from the strata; and
  - (ii) it appears to the [<sup>F27</sup>Agency], having regard to the extent to which the level of water in the strata depends on the flow of those waters, that the exercise of that right may be substantially affected by so much of the draft statement in question as relates to those waters;
  - (b) inland waters are related inland waters in relation to any other inland waters, where it appears to the [<sup>F27</sup>Agency] that changes in the flow of the other waters may affect the flow of the first-mentioned inland waters.
- (9) For the purposes of subsection (5) above the [<sup>F27</sup>Agency] shall be entitled (but shall not be bound) to treat as lawful any existing use of any inland waters unless—
- (a) by a decision given in any legal proceedings, it has been held to be unlawful; and
  - (b) that decision has not been quashed or reversed;
- and in that subsection the reference to land drainage includes a reference to defence against water (including sea water), irrigation other than spray irrigation, warping and the provision of flood warning systems.

#### Textual Amendments

- F27** Words in s. 21 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F28** Words in s. 21(3)(e) inserted (26.1.1998) by S.I. 1997/2971, **art. 6(1)**, **Sch. paras. 18, 19(a)**
- F29** Words in s. 21(3)(e) substituted (25.11.2002) by S.I. 2002/2626, **art. 20**, **Sch. 2 para. 18(2)**
- F30** Words in s. 21(3)(f) added (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 133(1)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**
- F31** Words in s. 21(4)(b) substituted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 133(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

- M6** 1989 c. 29.

## 22 Directions to the [<sup>F32</sup>Agency] to consider minimum acceptable flow.

- (1) If the [<sup>F32</sup>Agency] is directed by the Secretary of State to consider whether the minimum acceptable flow for any particular inland waters ought to be determined or reviewed, the [<sup>F32</sup>Agency] shall consider that matter as soon as reasonably practicable after being directed to do so.
- (2) After considering any matter under subsection (1) above the [<sup>F32</sup>Agency] shall submit to the Secretary of State with respect to the inland waters in question either—
- (a) such a draft statement as is mentioned in subsection (1) of section 21 above; or
  - (b) a draft statement that no minimum acceptable flow ought to be determined for those waters or, as the case may require, that the minimum acceptable flow for those waters does not need to be changed.
- and subsections (6) and (7) of that section shall apply in relation to a draft statement under this subsection as they apply in relation to a draft statement under that section.
- (3) Without prejudice to the generality of paragraph 4 of Schedule 5 to this Act, the power of the Secretary of State under that paragraph to alter a draft statement before approving it shall include power to substitute a statement containing or amending any

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such provision as is mentioned in subsection (2) of section 21 above for such a draft statement as is mentioned in subsection (2)(b) of this section.

#### Textual Amendments

**F32** Words in s. 22 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### 23 Minimum acceptable level or volume of inland waters.

- (1) Where it appears to the [<sup>F33</sup>Agency], in the case of any particular inland waters, that it would be appropriate to measure the level or the volume (either instead of or in addition to the flow) the [<sup>F33</sup>Agency] may determine that sections 21 and 22 above shall apply in relation to those inland waters as if any reference to the flow were or, as the case may be, included a reference to the level or to the volume.
- (2) Where the [<sup>F33</sup>Agency] makes a determination under subsection (1) above with respect to any inland waters, any draft statement prepared for the purposes of section 21 or 22 above, in so far as it relates to those waters, shall state—
  - (a) whether the level or the volume is to be measured; and
  - (b) whether it is to be measured instead of, or in addition to, the flow.
- (3) Chapter II of this Part shall apply in relation to any inland waters with respect to which a determination has been made under subsection (1) above as if any reference in that Chapter to the flow were, or (as the case may be) included, a reference to the level or, as the case may be, the volume.

#### Textual Amendments

**F33** Words in s. 23 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

## CHAPTER II

### ABSTRACTION AND IMPOUNDING

#### Modifications etc. (not altering text)

- C2** Chapter II of Part II excluded (1.4.1996) by 1995 c. 25, **s. 6(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- C3** Chapter II of Part II modified (18.12.1996) by 1996 c. 61, s. 52, **Sch. 15 Pt. III para. 11**
- C4** Pt. II Ch. II modified (22.3.2005) by **Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005** (S.I. 2005/927), **Sch. 11 para. 11** (with art. 51)

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### *Restrictions on abstraction and impounding*

## **24 Restrictions on abstraction.**

- (1) Subject to the following provisions of this Chapter and to any drought order [<sup>F34</sup>or drought permit] under Chapter III of this Part, no person shall—
  - (a) abstract water from any source of supply; or
  - (b) cause or permit any other person so to abstract any water,
 except in pursuance of a licence under this Chapter granted by the [<sup>F35</sup>Agency] and in accordance with the provisions of that licence.
- (2) Where by virtue of subsection (1) above the abstraction of water contained in any underground strata is prohibited except in pursuance of a licence under this Chapter, no person shall begin, or cause or permit any other person to begin—
  - (a) to construct any well, borehole or other work by which water may be abstracted from those strata;
  - (b) to extend any such well, borehole or other work; or
  - (c) to instal or modify any machinery or apparatus by which additional quantities of water may be abstracted from those strata by means of a well, borehole or other work,
 unless the conditions specified in subsection (3) below are satisfied.
- (3) The conditions mentioned in subsection (2) above are—
  - (a) that the abstraction of the water or, as the case may be, of the additional quantities of water is authorised by a licence under this Chapter; and
  - (b) that—
    - (i) the well, borehole or work, as constructed or extended; or
    - (ii) the machinery or apparatus, as installed or modified,
 fulfils the requirements of that licence as to the means by which water is authorised to be abstracted.
- (4) A person shall be guilty of an offence if—
  - (a) he contravenes subsection (1) or (2) above; or
  - (b) he is for the purposes of this section the holder of a licence under this Chapter and, in circumstances not constituting such a contravention, does not comply with a condition or requirement imposed by the provisions, as for the time being in force, of that licence.
- (5) A person who is guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding [<sup>F36</sup>£20,000];
  - (b) on conviction on indictment, to a fine.
- (6) The restrictions imposed by this section shall have effect notwithstanding anything in any enactment contained in any Act passed before the passing of the <sup>M7</sup>Water Resources Act 1963 on 31st July 1963 or in any statutory provision made or issued, whether before or after the passing of that Act, by virtue of such an enactment.

#### **Textual Amendments**

**F34** By S.I. 1996/593, reg. 3, Sch. 2 para. 8 it is provided that the words “or drought permit” be substituted (1.4.1996) for the words following “drought order”

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**F35** Word in s. 24(1) substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F36** Word in s. 24(5)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), **ss. 60(1), 105(3)** (with s. 60(2)); S.I. 2004/641, **art. 3(n)** (with **Sch. 3 para. 7**)

#### Modifications etc. (not altering text)

**C5** S. 24(1) restricted (16.3.1992) by Aire and Calder Navigation Act 1992 (c. iv), **s. 17(2)**

#### Marginal Citations

**M7** 1963 c. 38.

## 25 Restrictions on impounding.

- (1) Subject to the following provisions of this Chapter and to any drought order [<sup>F37</sup>or drought permit] under Chapter III of this Part, no person shall begin, or cause or permit any other person to begin, to construct or alter any impounding works at any point in any inland waters which are not discrete waters unless -
  - (a) a licence under this Chapter granted by the [<sup>F38</sup>Agency] to obstruct or impede the flow of those inland waters at that point by means of impounding works is in force;
  - (b) the impounding works will not obstruct or impede the flow of the inland waters except to the extent, and in the manner, authorised by the licence; and
  - (c) any other requirements of the licence, whether as to the provision of compensation water or otherwise, are complied with.
- (2) A person shall be guilty of an offence if—
  - (a) he contravenes subsection (1) above; or
  - (b) he is for the purposes of this section the holder of a licence under this Chapter and, in circumstances not constituting such a contravention, does not comply with a condition or requirement imposed by the provisions, as for the time being in force, of that licence.
- (3) A person who is guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding [<sup>F39</sup>£20,000];
  - (b) on conviction on indictment, to a fine.
- (4) Subject to subsection (5) below, the restrictions imposed by this section shall have effect notwithstanding anything in any enactment contained in any Act passed before the passing of the <sup>M8</sup>Water Resources Act 1963 on 31st July 1963 or in any statutory provision made or issued, whether before or after the passing of that Act, by virtue of such an enactment.
- (5) Subject to subsection (6) below, the restriction on impounding works shall not apply to the construction or alteration of any impounding works, if—
  - (a) the construction or alteration of those works; or
  - (b) the obstruction or impeding of the flow of the inland waters resulting from the construction or alteration of the works,

is authorised (in whatsoever terms, and whether expressly or by implication) by virtue of any such statutory provision as at the coming into force of this Act was an alternative statutory provision for the purposes of section 36(2) of the Water Resources Act 1963.

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (6) The provisions of this Chapter shall have effect in accordance with subsection (7) below where by virtue of any such provision as is mentioned in subsection (5) above and is for the time being in force—
- (a) any water undertaker or sewerage undertaker to which rights under that provision have been transferred in accordance with a scheme under Schedule 2 to the <sup>M9</sup>Water Act 1989 or Schedule 2 to the <sup>M10</sup>Water Industry Act 1991; or
  - (b) any other person,
- is authorised (in whatsoever terms, and whether expressly or by implication) to obstruct or impede the flow of any inland waters by means of impounding works (whether those works have already been constructed or not).
- (7) Where subsection (6) above applies, the provisions of this Chapter shall have effect (with the necessary modifications), where the reference is to the revocation or variation of a licence under this Chapter, as if—
- (a) any reference in those provisions to a licence under this Chapter included a reference to the authorisation mentioned in that subsection; and
  - (b) any reference to the holder of such a licence included a reference to the undertaker or other person so mentioned.
- (8) In this Chapter “impounding works” means either of the following, that is to say—
- (a) any dam, weir or other works in any inland waters by which water may be impounded;
  - (b) any works for diverting the flow of any inland waters in connection with the construction or alteration of any dam, weir or other works falling within paragraph (a) above.

#### Textual Amendments

- F37** By [S.I. 1996/593](#), [reg. 3](#), [Sch. 2 para. 8](#) it is provided that the words “or drought permit” be substituted (1.4.1996) for the words following “drought order”
- F38** Word in s. 25(1) substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120](#), [Sch. 22 para. 128](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3](#)
- F39** Word in s. 25(3)(a) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 60\(1\)](#), [105\(3\)](#) (with [s. 60\(2\)](#)); [S.I. 2004/641](#), [art. 3\(n\)](#) (with [Sch. 3 para. 7](#))

#### Marginal Citations

- M8** [1963 c. 38](#).  
**M9** [1989 c. 15](#).  
**M10** [1991 c. 56](#).

### *Rights to abstract or impound*

## 26 Rights of navigation, harbour and conservancy authorities.

- (1) The restriction on abstraction shall not apply to any transfer of water from one area of inland waters to another in the course of, or resulting from, any operations carried out by a navigation authority, harbour authority or conservancy authority in the carrying out of their functions as such an authority.

*Status: Point in time view as at 01/04/2005.*

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- (2) The restriction on impounding works shall not apply to the construction or alteration of impounding works in the course of the performance by a navigation authority, harbour authority or conservancy authority of their functions as such an authority.

## **[<sup>F40</sup>27 Rights to abstract small quantities.**

- (1) The restriction on abstraction shall not apply to any abstraction of a quantity of water not exceeding twenty cubic metres in any period of twenty-four hours, if the abstraction does not form part of a continuous operation, or of a series of operations, by which a quantity of water which, in aggregate, is more than twenty cubic metres is abstracted during the period.
- (2) In the case of any abstraction of water from underground strata which falls within subsection (1) above, the restriction imposed by section 24(2) above shall not apply—
- (a) to the construction or extension of any well, borehole or other work; or
  - (b) to the installation or modification of machinery or other apparatus,
- if the well, borehole or other work is constructed or extended, or the machinery or apparatus is installed or modified, for the purpose of abstracting the water.
- (3) Where a person is authorised by a licence under this Chapter to carry on a particular abstraction operation (or series of operations), this section does not permit him to carry it on beyond the authorisation conferred by the licence.

### **Textual Amendments**

**F40** Ss 27, 27A substituted (1.4.2004 for the insertion of s. 27A, 1.4.2005 in so far as not already in force) for s. 27 by [Water Act 2003 \(c. 37\)](#), **ss. 6(1), 105(3)**; [S.I. 2004/641, art. 3\(a\)](#) (with [Sch. 3 paras. 17](#)); [S.I. 2005/968, art. 2\(a\)](#)

## **27A Variation of small quantity threshold**

- (1) The Secretary of State may by order made by statutory instrument provide that section 27(1) above is to have effect in relation to—
- (a) a geographical area; or
  - (b) a class of inland waters; or
  - (c) a class of underground strata; or
  - (d) a class of inland waters or of underground strata within a geographical area,
- (in each case as specified in the order) as if for “twenty cubic metres” there were substituted another quantity specified in the order.
- (2) The Secretary of State shall not make such an order except upon the application of the Agency; but he may direct the Agency to make such an application.
- (3) Such an order may—
- (a) make different provision in relation to the different paragraphs in subsection (1) above; and
  - (b) make different provision for different areas, waters or underground strata.
- (4) Schedule 6 to this Act shall have effect with respect to applications for orders under subsection (1) above and with respect to the making of such orders.

*Status: Point in time view as at 01/04/2005.*

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- (5) An order under subsection (1) above which specifies a greater quantity than the one which previously had effect in relation to the area, waters or strata in question may make provision for a licence to abstract water granted under this Chapter—
  - (a) which is for the time being in force; but
  - (b) which by virtue of the order has become wholly or partly unnecessary, to cease to have effect, or to cease to have effect to the extent specified in the order.
- (6) An order under subsection (1) above may include provision for or in relation to the payment by the Agency of compensation, in cases specified in the order, to a person who—
  - (a) immediately before the making of an order under subsection (1) above, had been in a position to carry out an abstraction to which, by virtue of section 27(1) above, the restriction on abstraction did not apply;
  - (b) following the making of that order, requires a licence under this Chapter in order to carry out that abstraction; and
  - (c) has suffered loss or damage as a result of his having been—
    - (i) refused such a licence in respect of that abstraction; or
    - (ii) granted such a licence, but in respect of an abstraction of more limited extent than the one he had been in a position to carry out.
- (7) Paragraphs (e) and (f) of section 219(2) below apply in relation to orders under subsection (1) above as they apply to regulations made under this Act.
- (8) A statutory instrument containing an order under subsection (1) above shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

- F40** Ss 27, 27A substituted (1.4.2004 for the insertion of s. 27A, 1.4.2005 in so far as not already in force) for s. 27 by [Water Act 2003 \(c. 37\)](#), [ss. 6\(1\)](#), 105(3); [S.I. 2004/641](#), [art. 3\(a\)](#) (with [Sch. 3 paras. 17](#)); [S.I. 2005/968](#), [art. 2\(a\)](#)

### <sup>F41</sup>28 **Curtailment of rights under section 27.**

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#### Textual Amendments

- F41** S. 28 repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), [ss. 6\(2\)](#), 105(3), [Sch. 9 Pt. 1](#); [S.I. 2005/968](#), [art. 2\(a\)\(n\)](#)

### 29 **Rights to abstract for drainage purposes etc.**

- (1) The restriction on abstraction shall not apply to any abstraction of water from a source of supply in the course of, or resulting from, any operations for purposes of land drainage.
- (2) The restriction on abstraction shall not apply to any abstraction of water from a source of supply in so far as the abstraction (where it does not fall within subsection (1) above) is necessary—

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- (a) to prevent interference with any mining, quarrying, engineering, building or other operations (whether underground or on the surface); or
  - (b) to prevent damage to works resulting from any such operations.
- (3) Where—
  - (a) water is abstracted, in the course of any such operations as are mentioned in subsection (2) above, from any excavation into underground strata in a case in which the level of water in the underground strata depends wholly or mainly on water entering it from those strata; and
  - (b) the abstraction is necessary as mentioned in that subsection,the exemption conferred by that subsection shall apply notwithstanding that the water is used for the purposes of the operations.
- (4) In the case of any abstraction of water from underground strata which falls within subsection (1) or (2) above, the restriction imposed by section 24(2) above shall not apply—
  - (a) to the construction or extension of any well, borehole or other work; or
  - (b) to the installation or modification of machinery or other apparatus,if the well, borehole or other work is constructed or extended, or the machinery or apparatus is installed or modified, for the purpose of abstracting the water.
- (5) In this section, “land drainage” includes the protection of land against erosion or encroachment by water, whether from inland waters or from the sea, and also includes warping and irrigation other than spray irrigation.

### **30 Notices with respect to borings not requiring licences.**

- (1) Where any person—
  - (a) proposes to construct a well, borehole or other work which is to be used solely for the purpose of abstracting, to the extent necessary to prevent interference with the carrying out or operation of any underground works, water contained in underground strata; or
  - (b) proposes to extend any such well, borehole or other work,he shall, before he begins to construct or extend the work, give to the [<sup>F42</sup>Agency] a notice of his intention in the prescribed form.
- (2) Where a notice under subsection (1) above is given to the [<sup>F42</sup>Agency] by any person, the [<sup>F42</sup>Agency] may (subject to section 31 below) by notice to that person require him, in connection with the construction, extension or use of the work to which that person’s notice relates, to take such reasonable measures for conserving water as are specified in the notice.
- (3) The measures that may be specified in a notice under subsection (2) above shall be measures which, in the opinion of the [<sup>F42</sup>Agency], will not interfere with the protection of the underground works in question.
- (4) Any person who contravenes subsection (1) above or fails to comply with a notice under subsection (2) above shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

*Status: Point in time view as at 01/04/2005.*

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#### Textual Amendments

**F42** Words in s. 30 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 128](#), (with ss. 7(6), 115, 117); [S.I. 1996/186, art. 3](#)

#### Modifications etc. (not altering text)

**C6** S. 30 restricted (18.12.1996) by [1996 c. 61, s. 52, Sch. 15 Pt. III para. 11](#)

**C7** S. 30 restricted (22.3.2005) by [Midland Metro \(Wednesbury to Brierley Hill and Miscellaneous Amendments\) Order 2005 \(S.I. 2005/927\), Sch. 11 para. 11](#) (with art. 51)

### 31 Appeals against conservation notices under section 30.

- (1) The person on whom a notice under section 30(2) above (“a conservation notice”) is served may, by notice to the Secretary of State, appeal to him against the conservation notice on either or both of the following grounds, that is to say—
  - (a) that the measures required by the conservation notice are not reasonable;
  - (b) that those measures would interfere with the protection of the underground works in question.
- (2) Any notice of appeal against a conservation notice shall be served within such period (not being less than twenty-eight days from the date of service of the conservation notice) and in such manner as may be prescribed.
- (3) Before determining an appeal against a conservation notice, the Secretary of State may, if he thinks fit—
  - (a) cause a local inquiry to be held; or
  - (b) afford to the appellant and the <sup>F43</sup>Agen cy] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;
 and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the appellant or the <sup>F43</sup>Agency] to be heard with respect to the appeal.
- (4) On an appeal against a conservation notice the Secretary of State may confirm, quash or vary the notice as he may consider appropriate.
- (5) The decision of the Secretary of State on any appeal against a conservation notice shall be final.
- (6) The Secretary of State may by regulations make provision as to the manner in which appeals against conservation notices are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such appeals or decisions on any such appeals.

#### Textual Amendments

**F43** Words in s. 31 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 128](#) (with ss. 7(6), 115, 117); [S.I. 1996/186, art. 3](#)

*Status: Point in time view as at 01/04/2005.*

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**32 Miscellaneous rights to abstract.**

- (1) The restriction on abstraction shall not apply to any abstraction by machinery or apparatus installed on a vessel, where the water is abstracted for use on that, or any other, vessel.
- (2) The restriction on abstraction and the other restrictions imposed by section 24 above shall not apply to the doing of anything—
  - (a) for <sup>F44</sup>extinguishing fires or protecting life and property in the event of fire] ; or
  - (b) for the purpose of testing apparatus used for <sup>F45</sup>either of ] those purposes or of training or practice in the use of such apparatus.
- (3) The restriction on abstraction and the other restrictions imposed by section 24 above shall not apply—
  - (a) to any abstraction of water;
  - (b) to the construction or extension of any well, borehole or other work; or
  - (c) to the installation or modification of machinery or other apparatus,if the abstraction, construction, extension, installation or modification is for any of the purposes specified in subsection (4) below and takes place with the consent of the <sup>F46</sup>Agency] and in compliance with any conditions imposed by the <sup>F46</sup>Agency].
- (4) The purposes mentioned in subsection (3) above are—
  - (a) the purpose of ascertaining the presence of water in any underground strata or the quality or quantity of any such water; and
  - (b) the purpose of ascertaining the effect of abstracting water from the well, borehole or other work in question on the abstraction of water from, or the level of water in, any other well, borehole or other work or any inland waters.

**Textual Amendments**

- F44** Words in s. 32(2)(a) substituted (1.10.2004 except in relation to W., 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), s. 61, [Sch. 1 para. 79\(a\)](#); S.I. 2004/2304, art. 2; S.I. 2004/2917, art. 2
- F45** Words in s. 32(2)(b) inserted (1.10.2004 except in relation to W., 10.11.2004 for W.) by [Fire and Rescue Services Act 2004 \(c. 21\)](#), s. 61, [Sch. 1 para. 79\(b\)](#); S.I. 2004/2304, art. 2; S.I. 2004/2917, art. 2
- F46** Words in s. 32 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25](#), s. 120, [Sch. 22 para. 128](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)

<sup>F47</sup>**33 Power to provide for further rights to abstract.**

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**Textual Amendments**

- F47** S. 33 repealed with a saving (1.4.2004) by [Water Act 2003 \(c. 37\)](#), ss. 10(11), 105(3), [Sch. 9 Pt. 1](#); S.I. 2004/641, [art. 3\(c\)\(z\)](#)

*Status: Point in time view as at 01/04/2005.*

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### **[<sup>F48</sup>33A Power to provide for further exemptions**

- (1) The Secretary of State may make regulations providing for further cases in which—
  - (a) the restriction on abstraction (and, in the case of abstractions from underground strata, the other restrictions imposed by section 24 above); or
  - (b) the restriction on impounding works,
 shall not apply; and in this section such a case is referred to as an “exemption”.
- (2) The regulations may, in particular, make provision, in relation to an exemption—
  - (a) for the exemption to apply only for a prescribed period;
  - (b) for the exemption not to apply unless prescribed conditions are satisfied, or continue to be satisfied;
  - (c) for the Agency to be notified, or its consent obtained—
    - (i) before any particular abstraction operation or series of such operations begins; or
    - (ii) in connection with such an operation or series of operations relating to the abstraction of water in underground strata, before any other thing which is mentioned in section 24(2) above is done; or
    - (iii) before any impounding works are constructed or altered,
 in reliance on the exemption.
- (3) The regulations may provide for an exemption to apply generally or to relate to—
  - (a) a prescribed geographical area;
  - (b) a prescribed source of supply (in the case of an exemption from the restriction on abstraction or the other restrictions imposed by section 24 above); or
  - (c) prescribed inland waters (in the case of an exemption from the restriction on impounding works).
- (4) Subject to subsection (5) below, if regulations under this section provide for an exemption falling within subsection (1)(a) above, the regulations shall—
  - (a) if appropriate, make provision for the exemption not to permit a person who is authorised by a licence under this Chapter to carry on an abstraction operation (or series of operations) to carry it on beyond the authorisation conferred by the licence; and
  - (b) make provision as to whether or not, in relation to any abstraction, the exemption provided for by the regulations is to be counted cumulatively with any other exemption which a person has by virtue of this section or section 27 above.
- (5) The regulations may make provision for a licence granted under this Chapter and which is for the time being in force to cease to have effect, or to cease to have effect to the extent specified in the regulations, if it authorises an activity which falls to any extent within the exemption provided for by the regulations.]

#### **Textual Amendments**

**F48** S. 33A inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 9, 105(3)**; [S.I. 2004/641](#), **art. 3(b)** (with [Sch. 3 paras. 17](#))

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *Applications for a licence*

## **34 Regulations with respect to applications.**

- (1) Any application for a licence under this Chapter shall be made in such manner as may be prescribed, and shall include such particulars, [<sup>F49</sup>be accompanied by such reports, ] and be verified by such evidence, as may be prescribed.
- (2) The Secretary of State may by regulations make provision as to the manner in which applications for the grant of licences under this Chapter are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such applications or decisions on such applications [<sup>F50</sup>, and provision for making such applications available for public inspection.]
- (3) Without prejudice to the generality of subsection (2) above, provision shall be made by regulations under this section for securing that, in such circumstances as may be prescribed (being circumstances in which it appears to the Secretary of State that applications for licences under this Chapter would be of special concern to National Park <sup>F51</sup> . . . authorities)—
  - (a) notice of any such application will be given to such one or more National Park <sup>F51</sup> . . . authorities as may be determined in accordance with the regulations; and
  - (b) the matters to which the [<sup>F52</sup>Agen cy] or, as the case may be, the Secretary of State is to have regard in dealing with the application will include any representations made by any such National Park <sup>F51</sup> . . . authority within such period and in such manner as may be prescribed.
- (4) The preceding provisions of this section shall have effect subject to any express provision contained in, or having effect by virtue of, any other enactment contained in this Chapter; and any regulations made under this section shall have effect subject to any such express provision.

<sup>F53</sup>(5) . . . . .

#### **Textual Amendments**

- F49** Words in s. 34(1) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), s. 105(3), [Sch. 7 para. 2\(a\)](#); S.I. 2004/2528, [art. 2\(t\)\(i\)](#) (with [Sch. para. 8](#))
- F50** Words in s. 34(2) added (1.10.2004) by [Water Act 2003 \(c. 37\)](#), s. 105(3), [Sch. 7 para. 2\(b\)](#); S.I. 2004/2528, [art. 2\(t\)\(i\)](#) (with [Sch. para. 8](#))
- F51** Words in s. 34 repealed (1.4.1997) by [1995 c. 25](#), s. 120(3), [Sch. 24](#) (with ss. 7(6), 115, 117); S.I. 1996/2560, [art. 2](#), [Sch.](#)
- F52** Words in s. 34 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25](#), s. 120, [Sch. 22 para. 128](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)
- F53** S. 34(5) repealed (1.4.1997) by [1995 c. 25](#), s. 120(3), [Sch. 24](#) (with ss. 7(6), 115, 117); S.I. 1996/2560, [art. 2](#), [Sch.](#)

## **35 Restrictions on persons who may make applications for abstraction licences.**

- (1) No application for a licence under this Chapter to abstract water shall be entertained unless it is made by a person entitled to make the application in accordance with the following provisions of this section.

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (2) In relation to abstractions from any inland waters, a person shall be entitled to make the application if, at the place (or, if more than one, at each of the places) at which the proposed abstractions are to be effected, either—
- (a) he is the occupier of land contiguous to the inland waters; or
  - (b) he satisfies the [<sup>F54</sup>Agency] that he has, or at the time when the proposed licence is to take effect will have, a right of access to such land.
- (3) In relation to abstractions from underground strata, a person shall be entitled to make the application if either—
- (a) he is the occupier of land consisting of or comprising those underground strata; or
  - (b) the following two conditions are satisfied, that is to say—
    - (i) the case is one in which water contained in an excavation into underground strata is to be treated as water contained in those strata by virtue of the level of water in the excavation depending wholly or mainly on water entering it from those strata; and
    - (ii) that person satisfies the [<sup>F54</sup>Agency] that he has, or at the time when the proposed licence is to take effect will have, a right of access to land consisting of, or comprising, those underground strata.
- (4) Any reference in this section to a person who is the occupier of land of any description—
- (a) includes a reference to a person who satisfies the [<sup>F54</sup>Agency] that he has entered into negotiations for the acquisition of an interest in land of that description such that, if the interest is acquired by him, he will be entitled to occupy that land; and
  - (b) without prejudice to the application of paragraph (a) above to a person who is or can be authorised to acquire land compulsorily, also includes any person who satisfies the [<sup>F54</sup>Agency] that by virtue of any enactment, the compulsory acquisition by that person of land of that description either has been authorised or can be authorised and has been initiated.
- (5) In subsection (4) above the reference to initiating the compulsory acquisition of land by a person is a reference to—
- (a) the submission to the relevant Minister of a draft of an order which, if made by that Minister in the form of the draft, will authorise that person to acquire that land compulsorily, with or without other land; or
  - (b) the submission to the relevant Minister of an order which, if confirmed by that Minister as submitted will authorise that person to acquire that land compulsorily, with or without other land.
- (6) In subsection (5) above “the relevant Minister”, in relation to the compulsory acquisition of land by any person, means the Minister who, in accordance with the enactment mentioned in subsection (4)(b) above, is empowered to authorise that person to acquire land compulsorily.

#### Textual Amendments

**F54** Words in s. 35 substituted (subject to other provisions of the amending Act) (1.4.1996) 1995 c. 25, s. 120, Sch. 22 para. 128 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### 36 Application for combined abstraction and impounding licence.

Where a licence under this Chapter is required by virtue of section 25 above for constructing or altering impounding works at a point in any inland waters, for the purpose of abstracting water from those waters at or near that point—

- (a) an application may be made to the [<sup>F55</sup>Agency] for a combined licence under this Chapter to obstruct or impede the flow of those inland waters by means of impounding works at that point and to abstract the water; and
- (b) the [<sup>F55</sup>Agency] shall have power (subject to the provisions of this Chapter as to procedure and as to the matters to be taken into account in dealing with applications for licences) to grant such a licence accordingly.

#### Textual Amendments

**F55** Words in s. 36 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### 37 Publication of application for licence.

- (1) The [<sup>F56</sup>Agency] shall not entertain an application for a licence under this Chapter to abstract water or to obstruct or impede the flow of any inland waters by means of impounding works or for a combined licence, unless the application is accompanied—
  - (a) by a copy of a notice in the prescribed form; and
  - (b) by the prescribed evidence that the necessary notices of the application have been given.
- (2) Subject to subsection (3) below, the necessary notices of an application have been given for the purposes of subsection (1) above if—
  - (a) the notice mentioned in paragraph (a) of that subsection has been published—
    - (i) in the London Gazette; and
    - (ii) at least once in each of two successive weeks, in one or more newspapers (other than the London Gazette) circulating in the relevant locality;
  - and
  - (b) a copy of that notice has been served, not later than the date on which it was first published as mentioned in paragraph (a)(ii) above—
    - (i) on any navigation authority, harbour authority or conservancy authority having functions in relation to any inland waters at a proposed point of abstraction or impounding;
    - (ii) on the drainage board for any internal drainage district within which any such proposed point is situated; and
    - (iii) on any water undertaker within whose area any such proposed point is situated.
- (3) Where the licence applied for is exclusively for the abstraction of water from a source of supply that does not form part of any inland waters, the giving of the necessary notices shall not for the purposes of subsection (1) above require the service of any copy of the notice mentioned in paragraph (a) of that subsection on any navigation authority, harbour authority, conservancy authority or drainage board.

*Status: Point in time view as at 01/04/2005.*

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- (4) A notice for the purposes of the preceding provisions of this section, in addition to containing any other matters required to be contained in that notice, shall—
- (a) name a place within the relevant locality where a copy of the application, and of any map, plan or other document submitted with it, will be open to inspection by the public, free of charge, at all reasonable hours during a period specified in the notice in accordance with subsection (5) below; and
  - (b) state that any person may make representations in writing to the [<sup>F56</sup>Agency] with respect to the application at any time before the end of that period.
- (5) The period specified in a notice for the purposes of the preceding provisions of this section shall be a period which—
- (a) begins not earlier than the date on which the notice is first published in a newspaper other than the London Gazette; and
  - (b) ends not less than twenty-eight days from that date and not less than twenty-five days from the date on which the notice is published in the London Gazette.
- (6) Where—
- (a) an application for a licence under this Chapter to abstract water is made to the [<sup>F56</sup>Agency]; and
  - (b) the application proposes that the quantity of water abstracted in pursuance of the licence should not in any period of twenty-four hours exceed, in aggregate, twenty cubic metres or any lesser amount specified in the application,
- the [<sup>F56</sup>Agency] may dispense with the requirements imposed by virtue of the preceding provisions of this section if and to the extent that it appears to the [<sup>F56</sup>Agency] appropriate to do so.
- (7) In this section—
- “proposed point of abstraction or impounding”, in relation to any application for a licence under this Chapter, means a place where a licence, if granted in accordance with the application, would authorise water to be abstracted or, as the case may be, would authorise inland waters to be obstructed or impeded by means of impounding works; and
- “relevant locality”, in relation to an application for a licence under this Act, means the locality in which any proposed point of abstraction or impounding is situated.

#### Textual Amendments

**F56** Words in s. 37 substituted (subject to other provisions of the amending Act) (1.4.1996) substituted by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### *Consideration of licence applications*

## 38 General consideration of applications.

- (1) The [<sup>F57</sup>Agency] shall not determine any application for a licence under this Chapter before the end of the period specified for the purposes of the application in accordance with section 37(5) above.

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- [<sup>F58</sup>(1A) An application shall be determined in two stages in accordance with subsections (1B) and (1C) below if it is an application for a full licence or a transfer licence which, if granted—
- (a) would take effect immediately after the expiry of an existing licence of the same type (the “existing licence”) and be held by the same person as the holder of that licence; but
  - (b) would in any other respect be different from the existing licence in a way which, if the existing licence were to continue without expiring, would require an application to be made under section 51(2) below for a variation of the licence.
- (1B) So far as the application relates to any such difference as is mentioned in subsection (1A)(b) above, it shall first be treated for determination purposes as if it were an application for a variation under section 51(2) below (but as if the existing licence were to continue without expiring).
- (1C) If the result of that would have been the grant of the application for variation of the licence, the application referred to in subsection (1) above shall be treated as one for a licence with that variation, and its determination concluded accordingly; and otherwise its determination shall be concluded as if it were an application for a licence with no such variation.]
- (2) Subject to the following provisions of this Chapter, on any application to the [<sup>F57</sup>Agency] for a licence under this Chapter, the [<sup>F57</sup>Agency]—
- (a) may grant a licence containing such provisions as the [<sup>F57</sup>Agency] considers appropriate; or
  - (b) if, having regard to the provisions of this Chapter, the [<sup>F57</sup>Agency] considers it necessary or expedient to do so, may refuse to grant a licence.
- (3) Without prejudice to section 39(1) below, the [<sup>F57</sup>Agency], in dealing with any application for a licence under this Chapter, shall have regard to [<sup>F59</sup>all the relevant circumstances, including any duty imposed by or under any enactment on bodies having functions in relation to inland waters (for example, navigation authorities and internal drainage boards), and shall have regard in particular to] —
- (a) any representations in writing relating to the application which are received by the [<sup>F57</sup>Agency] before the end of the period mentioned in subsection (1) above; and
  - (b) the requirements of the applicant, in so far as they appear to the [<sup>F57</sup>Agency] to be reasonable requirements.
- [<sup>F60</sup>and may have regard to any failure on the part of the applicant to make an application under section 40 of the Water Industry Act 1991 pursuant to a proposal made by the Agency under section 20C above.]

#### Textual Amendments

- F57** Words in s. 38 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F58** S. 38(1A)-(1C) inserted (1.4.2004) by Water Act 2003 (c. 37), **ss. 15(2)**, 105(3); S.I. 2004/641, **art. 3(d)** (with **Sch. 3 paras. 2, 7**)
- F59** Words in s. 38(3) inserted (1.4.2004) by Water Act 2003 (c. 37), **ss. 15(3)**, 105(3); S.I. 2004/641, **art. 3(d)** (with **Sch. 3 paras. 2, 7**)

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**F60** Words in s. 38(3) inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 31(2)**, 105(3); S.I. 2004/2528, art. 2(c) (with [Sch. para. 8](#))

### 39 **Obligation to have regard to existing rights and privileges.**

- (1) [<sup>F61</sup>Subject to subsection (1A) below,] the [<sup>F62</sup>Agency] shall not, except with the consent of the person entitled to the rights, grant a licence so authorising—
- (a) the abstraction of water; or
  - (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
- as to derogate from any rights which, at the time when the application is determined by the [<sup>F62</sup>Agency], are protected rights for the purposes of this Chapter.

[<sup>F63</sup>(1A) Subsection (1) above does not apply when—

- (a) the application to be determined is one which does not fall within subsection (1A) of section 38 above only because paragraph (b) of that subsection is not satisfied; or
- (b) the determination of an application is being concluded in accordance with subsection (1C) of that section.]

- (2) In a case where an application for a licence under this Chapter relates to abstraction from underground strata, the [<sup>F62</sup>Agency], in dealing with the application, shall have regard to the requirements of existing lawful uses of water abstracted from those strata, whether for agriculture, industry, water supply or other purposes.

<sup>F64</sup>(3) .....

- (4) Any reference in this Chapter, in relation to the abstraction of water or obstructing or impeding the flow of any inland waters by means of impounding works, to derogating from a right which is a protected right for the purposes of this Chapter is a reference to, as the case may be—
- (a) abstracting water; or
  - (b) so obstructing or impeding the flow of any such waters,
- in such a way, or to such an extent, as to prevent the person entitled to that right from abstracting water to the extent mentioned in [<sup>F65</sup>(as the case may be) section 39A(2) or (7), 48(1) or 59C(10) below or section 102(3) of the Water Act 2003, or in a provision made in an order by virtue of section 10(5)(b) of that Act, in each case subject to any limitations mentioned there].
- (5) For the purposes of subsection (2) above the [<sup>F62</sup>Agency] shall be entitled (but shall not be bound) to treat as lawful any existing use of water from underground strata unless—
- (a) by a decision given in any legal proceedings, it has been held to be unlawful; and
  - (b) that decision has not been quashed or reversed.

#### **Textual Amendments**

**F61** Words in s. 39(1) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(2)**, 105(3); S.I. 2004/641, art. 3(e) (with [Sch. 3 para. 7](#))

**F62** Words in s. 39 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25](#), s. 120, [Sch. 22 para. 128](#) (with [ss. 7\(6\)](#), 115, 117); S.I. 1996/186, [art. 3](#)

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- F63** S. 39(1A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(3)**, 105(3); S.I. 2004/641, art. 3(e) (with [Sch. 3 para. 7](#))
- F64** S. 39(3) repealed (1.4.2005) by [Water Act 2003 \(c. 37\)](#), ss. 16(4), 105(3), **Sch. 9 Pt. 1**; S.I. 2005/968, art. 2(c)(n)
- F65** Words in s. 39(4) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 16(5)**, 105(3); S.I. 2005/968, art. 2(c)

## **[<sup>F66</sup>39A Protected rights for the purposes of this Chapter**

- (1) For the purposes of this Chapter, a right is a protected right if—
- (a) it is such a right as a person who is the holder of a full licence is taken to have by virtue of section 48(1) below;
  - (b) it is such a right as a person is taken to have by virtue of subsection (2) below;
  - (c) it is such a right as a person continues to be taken to have by virtue of subsection (7) below;
  - (d) it is such a right as a person is taken to have by virtue of subsection (10) of section 59C below;
  - (e) it is such a right as a person continues to be taken to have by virtue of a provision made under subsection (5)(b) of section 10 of the Water Act 2003 in an order made under that section; or
  - (f) it is such a right as a person continues to be taken to have by virtue of section 102(3) of that Act.
- (2) A person who is in a position to carry out an abstraction of a quantity of water which—
- (a) by virtue of section 27(1) above is not subject to the restriction on abstraction; and
  - (b) also falls within subsection (4) or (5) below,
- shall be taken, for the purposes of this Chapter, to have a right to do so in respect of the maximum quantity mentioned in subsection (3) below.
- (3) The maximum quantity is the lower of the following—
- (a) twenty cubic metres;
  - (b) if, by virtue of an order under section 27A(1) above, section 27(1) above has, or has ever had, effect in relation to the source of supply and point of abstraction in question as if it referred to a quantity lower than twenty cubic metres, that lower quantity (or, if more than one, the lowest of them).
- (4) An abstraction falls within this subsection if it is an abstraction from inland waters carried out by or on behalf of an occupier of land contiguous to those waters at the place where the abstraction is effected (“contiguous land”), and—
- (a) the water is abstracted for use on a holding consisting of the contiguous land with or without other land held with that land; and
  - (b) it is abstracted for use on that holding for either or both of the following purposes—
    - (i) the domestic purposes of the occupier’s household;
    - (ii) agricultural purposes other than spray irrigation.
- (5) An abstraction falls within this subsection if it is an abstraction from underground strata and the water is abstracted by or on behalf of an individual as a supply of water for the domestic purposes of his household.

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- (6) Subsection (2) above shall not apply to a person in respect of an abstraction which that person is, or was at any time, taken to have a right to carry out by virtue of any provision mentioned in paragraph (a), (c), (d), (e) or (f) of subsection (1) above.
- (7) Subject to subsection (8) below, a person who was the holder of a full licence which has ceased to have effect (or has ceased in part to have effect) by virtue of—
- (a) any provision made by virtue of section 27A(5) above in an order made under section 27A(1) above; or
  - (b) any provision made by virtue of section 33A(5) above in regulations made under section 33A above,
- and who was taken in consequence of that licence (or that part of the licence) to have a right to abstract water by virtue of section 48(1) below shall continue to be taken to have that right for the purposes of this Chapter.
- (8) For the purposes of this Chapter, the person who was the holder of the licence in question (“the old licence”) shall cease to continue to be taken to have a right, by virtue of subsection (7) above, to abstract water if—
- (a) during a period mentioned in subsection (9) below he does not carry out any such abstraction as would have been authorised by the old licence if it had still been in force; or
  - (b) following a further order under section 27A(1) above or further regulations under section 33A above, he is granted another full licence in respect of abstraction from the same point as that authorised by the old licence.
- (9) The period referred to in subsection (8)(a) above is—
- (a) four years; or
  - (b) if the abstractions authorised under the old licence were abstractions planned to be carried out at intervals of more than four years, or abstractions for emergency purposes only, such longer period as the Agency may determine on the application of the holder of the old licence.
- (10) In subsections (8) and (9) above, references to the old licence, in the case of a licence which ceased to have effect only to the extent specified in the order or regulations referred to in subsection (7) above, are to the part of the licence which ceased to have effect.
- (11) Any reference in this Chapter to the person entitled to a protected right shall be construed in accordance with this section.
- (12) This section is subject to any provision made by virtue of subsection (3) of section 39B below, and to subsections (4) and (5) of that section.]

#### **Textual Amendments**

**F66** S. 39A inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 17(1)**, 105(3); S.I. 2005/968, art. 2(d) (with [Sch. 1 para. 2](#))

#### **[<sup>F67</sup>39B Register of certain protected rights**

- (1) The Secretary of State may by regulations make provision for and in connection with the establishment, and for the keeping and maintenance by the Agency, of one or more

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registers of protected rights which arise otherwise than by virtue of a licence under this Chapter to abstract water.

- (2) The regulations may, in particular, provide for—
- (a) a register to relate to a prescribed geographical area, or for different sections of a register to relate to different geographical areas (whether prescribed or not);
  - (b) the inclusion of protected rights which arise other than by virtue of any provision of this Act;
  - (c) the form and contents of the register, and its inspection by members of the public;
  - (d) the procedure for applying for a protected right to be included in the register, including any information which is to accompany the application;
  - (e) cases in which it is the duty of the Agency to include a protected right in the register without an application for inclusion having been made.
- (3) The Secretary of State may by order designate any geographical area in respect of which a register, or a section of a register, relates as an area of compulsory registration.
- (4) If he does so, a protected right in that area which is not registered shall not have effect as a protected right for any purpose of this Act (other than that of registering it) for so long as it is not registered.
- (5) Subsection (4) above does not apply in relation to any protected right until after the expiry of the period of two years beginning with the date on which the order under subsection (3) above was made, or such longer period as may be specified in the order.
- (6) An order under subsection (3) above may be made only on the application of the Agency; but the Secretary of State may direct the Agency to make such an application.
- (7) Schedule 6 to this Act shall have effect with respect to applications for orders under subsection (3) above and with respect to the making of such orders.
- (8) The power to make orders under this section shall be exercisable by statutory instrument; and a statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Paragraphs (d) to (f) of section 219(2) below apply in relation to orders under this section as they apply to regulations made under this Act.]

#### Textual Amendments

**F67** S. 39B inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 18, 105(3)**; S.I. 2004/641, art. 3(f) (with [Sch. 3 paras. 3, 7](#))

## 40 Obligation to take river flow etc. into account.

- (1) Without prejudice to sections 38(3) and 39(1) above, subsection (2) or, as the case may be, subsection (3) below shall apply where any application for a licence under this Chapter relates to abstraction from any inland waters or to obstructing or impeding the flow of any inland waters by means of impounding works.
- (2) If, in the case of such an application as is mentioned in subsection (1) above, the application is made at a time when no minimum acceptable flow for the inland waters in question has been determined under Chapter I of this Part, the [<sup>F68</sup>Agency], in

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dealing with the application, shall have regard to the considerations by reference to which, in accordance with section 21(4) and (5) above, a minimum acceptable flow for those waters would fall to be determined.

- (3) If, in the case of such an application as is mentioned in subsection (1) above, the application is made at a time after a minimum acceptable flow for the waters in question has been determined under Chapter I of this Part, the [<sup>F68</sup>Agency], in dealing with the application, shall have regard to the need to secure or, as the case may be, secure in relation to the different times or periods for which the flow is determined—
- (a) that the flow at any control point will not be reduced below the minimum acceptable flow at that point; or
  - (b) if it is already less than that minimum acceptable flow, that the flow at any control point will not be further reduced below the minimum acceptable flow at that point.
- (4) Without prejudice to sections 38(3) and 39(1) above, where—
- (a) an application for a licence under this Chapter relates to abstraction from underground strata; and
  - (b) it appears to the [<sup>F68</sup>Agency] that the proposed abstraction is likely to affect the flow, level or volume of any inland waters which are neither discrete waters nor waters comprised in an order under section 33 above,
- subsection (2) or, as the case may be, subsection (3) above shall apply as if the application related to abstraction from those waters.

#### Textual Amendments

**F68** Words in s. 40 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### *Call-in of applications*

#### **41 Secretary of State's power to call in applications**

- (1) The Secretary of State may give directions to the [<sup>F69</sup>Agency] requiring applications for licences under this Chapter to be referred to him, instead of being dealt with by the [<sup>F69</sup>Agency].
- (2) A direction under this section—
- (a) may relate either to a particular application or to applications of a class specified in the direction; and
  - (b) may except from the operation of the direction such classes of applications as may be specified in the direction in such circumstances as may be so specified.

#### Textual Amendments

**F69** Words in s. 41 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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## 42 Consideration of called-in applications.

- (1) Subject to the following provisions of this section and to section 46 below, the Secretary of State, on considering a called-in application—
  - (a) may determine that a licence shall be granted containing such provisions as he considers appropriate; or
  - (b) if, having regard to the provisions of this Act, he considers it necessary or expedient to do so, may determine that no licence shall be granted.
- (2) Before determining a called-in application, the Secretary of State may, if he thinks fit—
  - (a) cause a local inquiry to be held; or
  - (b) afford to the applicant and the [F70 Agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant or the [F70 Agency] to be heard with respect to the application.
- (3) The provisions of sections 37, 38(1) and (3), 39(2) and 40 above shall apply in relation to any called-in application as if—
  - (a) any reference in those provisions to the [F70 Agency], except the references in sections 37(4)(b) and (6)(a) and 38(3)(a), were a reference to the Secretary of State; and
  - (b) any reference to section 39(1) above were a reference to subsection (4) below.
- (4) [F71 Subject to subsection (4A) below,] in determining any called-in application and, in particular, in determining what (if any) direction to give under subsection (5) below, the Secretary of State shall consider whether any such direction would require the grant of a licence which would so authorise—
  - (a) the abstraction of water; or
  - (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,as to derogate from rights which, at the time when the direction in question is given, are protected rights for the purposes of this Chapter.
- [F72 (4A) Subsection (1A) of section 39 above applies in relation to subsection (4) above as it applies in relation to section 39(1) above.]
- (5) Where the decision of the Secretary of State on a called-in application is that a licence is to be granted, the decision shall include a direction to the [F70 Agency] to grant a licence containing such provisions as may be specified in the direction.
- (6) The decision of the Secretary of State on any called-in application shall be final.
- (7) In this section “called-in application” means an application referred to the Secretary of State in accordance with directions under section 41 above.

### Textual Amendments

- F70** Words in s. 42 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 128 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F71** Words in s. 42(4) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 16(6)(a), 105(3); S.I. 2004/641, art. 3(e) (with Sch. 3 para. 7)

*Status: Point in time view as at 01/04/2005.*

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**F72** S. 42(4A) inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 16(6)(b)**, 105(3); S.I. 2004/641, art. 3(e) (with [Sch. 3 para. 7](#))

### *Appeals with respect to decisions on licence applications*

## 43 Appeals to the Secretary of State.

- (1) Where an application has been made to the [<sup>F73</sup>Agency] for a licence under this Chapter, the applicant may by notice appeal to the Secretary of State if—
  - (a) the applicant is dissatisfied with the decision of the [<sup>F73</sup>Agency] on the application; or
  - (b) the [<sup>F73</sup>Agency] fails within the period specified in subsection (2) below to give to the applicant either—
    - (i) notice of the [<sup>F73</sup>Agency's] decision on the application; or
    - (ii) notice that the application has been referred to the Secretary of State in accordance with any direction under section 41 above.

[<sup>F74</sup>(1A) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).]

- (2) The period mentioned in subsection (1)(b) above is—
  - (a) except in a case falling within paragraph (b) below, such period as may be prescribed; and
  - (b) where an extended period is at any time agreed in writing between the applicant and the [<sup>F73</sup>Agency], the extended period.
- (3) A notice of appeal under this section shall be served—
  - (a) in such manner as may be prescribed; and
  - (b) within such period as may be prescribed, being a period of not less than twenty-eight days from, as the case may be—
    - (i) the date on which the decision to which it relates was notified to the applicant; or
    - (ii) the end of the period which, by virtue of subsection (2) above, is applicable for the purposes of subsection (1)(b) above.
- (4) Where a notice is served under this section in respect of any application, the applicant shall, within the period prescribed for the purposes of subsection (3)(b) above, serve a copy of the notice on the [<sup>F73</sup>Agency].
- (5) Where any representations in writing with respect to an application were made within the period specified for the purposes of the application in accordance with section 37(5) above, the Secretary of State shall, before determining an appeal under this section in respect of the application, require the [<sup>F73</sup>Agency] to serve a copy of the notice of appeal on each of the persons who made those representations.

### Textual Amendments

**F73** Words in s. 43 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25](#), s. 120, **Sch. 22 para. 128** (with [ss. 7\(6\)](#), 115, 117); S.I. 1996/186, **art. 3**

**F74** S. 43(1A) inserted (1.4.1996) by [1995 c. 25](#), s. 120(1), **Sch. 22 para. 134** (with [ss. 7\(6\)](#), 115, 117); S.I. 1996/186, **art. 3**

*Status: Point in time view as at 01/04/2005.*

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**Modifications etc. (not altering text)**

- C8** S. 43: power to delegate functions conferred (1.4.1996) by 1995 c. 25, s. 114(2)(v) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- C9** S. 43(1)(a) modified (1.4.2005) by The Water Act 2003 (Commencement No. 4, Transitional Provisions and Savings) Order 2005 (S.I. 2005/968), art. 4(1)(3), Sch. 1 para. 5(5)

**44 Determination of appeals.**

- (1) Subject to the following provisions of this Chapter, where an appeal is brought under section 43 above, the Secretary of State—
- (a) may allow or dismiss the appeal or reverse or vary any part of the decision of the [<sup>F75</sup>Agency], whether the appeal relates to that part of the decision or not; and
  - (b) may deal with the application as if it had been made to him in the first instance; and for the purposes of this section an appeal by virtue of section 43(1)(b) above shall be taken to be an appeal against a refusal of the application.
- (2) Before determining an appeal under section 43 above, the Secretary of State may, if he thinks fit—
- (a) cause a local inquiry to be held; or
  - (b) afford to the applicant and the [<sup>F75</sup>Agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;
- and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant or the [<sup>F75</sup>Agency] to be heard with respect to the appeal.
- (3) The Secretary of State, in determining an appeal under section 43 above, shall take into account—
- (a) any further representations in writing received by him, within the prescribed period, from the persons mentioned in section 43(5) above; and
  - (b) the requirements of the applicant, in so far as they appear to the Secretary of State to be reasonable requirements.
- (4) [<sup>F76</sup>Subject to subsection (4A) below,] in determining any appeal under section 43 above and, in particular, in determining what (if any) direction to give under subsection (6) below, the Secretary of State shall consider whether any such direction would require such a grant or variation of a licence as would so authorise—
- (a) the abstraction of water; or
  - (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,
- as to derogate from rights which, at the time when the direction in question is given, are protected rights for the purposes of this Chapter.
- [<sup>F77</sup>(4A) Subsection (1A) of section 39 above applies in relation to subsection (4) above as it applies in relation to section 39(1) above.]
- (5) The provisions of sections 39(2) and 40 above shall apply in relation to any appeal under section 43 above as if—
- (a) any reference in those provisions to the [<sup>F75</sup>Agency], were a reference to the Secretary of State; and

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- (b) the references to sections 38(3) and 39(1) above were references to subsections (3) and (4) above.
- (6) Where the decision on an appeal under section 43 above is that a licence is to be granted or to be varied or revoked, the decision shall include a direction to the [<sup>F75</sup>Agency], as the case may be—
  - (a) to grant a licence containing such provisions as may be specified in the direction;
  - (b) to vary the licence so as to contain such provisions as may be so specified; or
  - (c) to revoke the licence.
- (7) The decision of the Secretary of State on any appeal under section 43 above shall be final.

#### Textual Amendments

- F75** Words in s. 44 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F76** Words in s. 44(4) inserted (1.4.2004) by Water Act 2003 (c. 37), **ss. 16(7)(a)**, 105(3); S.I. 2004/641, **art. 3(e)** (with **Sch. 3 para. 7**)
- F77** S. 44(4A) inserted (1.4.2004) by Water Act 2003 (c. 37), **ss. 16(7)(b)**, 105(3); S.I. 2004/641, **art. 3(e)** (with **Sch. 3 para. 7**)

## 45 Regulations with respect to appeals.

- (1) The Secretary of State may by regulations make provision as to the manner in which appeals against decisions on applications for the grant, revocation or variation of licences under this Chapter are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such appeals or decisions on any such appeals.
- (2) Without prejudice to the generality of subsection (1) above, provision shall be made by regulations under this section for securing that, in prescribed circumstances (being circumstances in which it appears to the Secretary of State that applications for licences under this Chapter would be of special concern to National Park <sup>F78</sup> . . . authorities)—
  - (a) notice of any appeal against the decision on such an application, will be served on any National Park <sup>F78</sup> . . . authority who made representations falling within paragraph (b) of section 34(3) above; and
  - (b) the Secretary of State, in determining the appeal, will take account of any further representations made by such an authority within such period and in such manner as may be prescribed.
- (3) Subsections (4) <sup>F78</sup> . . . of section 34 above shall apply for the purposes of this section as they apply for the purposes of that section.

#### Textual Amendments

- F78** Words in s. 45 repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, **art. 2, Sch.**

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### *Form, contents and effect of licences*

#### **46 Form and contents of licences.**

- (1) The Secretary of State may by regulations make provision as to the form of licences under this Chapter or of any class of such licences; but any regulations under this subsection shall have effect subject to the following provisions of this section and to any other express provision contained in, or having effect by virtue of, any other enactment contained in this Chapter.
- (2) Every licence under this Chapter to abstract water shall make—
  - (a) provision as to the quantity of water authorised to be abstracted in pursuance of the licence from the source of supply to which the licence relates during a period or periods specified in the licence, including provision as to the way in which that quantity is to be measured or assessed for the purposes of this Chapter; and
  - (b) provision for determining, by measurement or assessment, what quantity of water is to be taken to have been abstracted during any such period by the holder of the licence from the source of supply to which the licence relates.
- (3) Every licence under this Chapter to abstract water shall indicate the means by which water is authorised to be abstracted in pursuance of the licence, by reference either to specified works, machinery or apparatus or to works, machinery or apparatus fulfilling specified requirements.
- [<sup>F79</sup>(4) Every licence under this Chapter to abstract water shall also specify the purposes for which water abstracted in pursuance of the licence is to be used.
- (5) Every licence under this Chapter to abstract water shall state—
  - (a) the date on which it takes effect; and
  - (b) the date on which it expires.
- (5A) Every licence under this Chapter to obstruct or impede any inland waters shall remain in force until revoked.]
- (6) Different provision may be made by the same licence with respect to any one or more of the following matters, that is to say—
  - (a) the abstraction of water during different periods;
  - (b) the abstraction of water from the same source of supply but at different points or by different means;
  - (c) the abstraction of water for use for different purposes;and any such provision as is mentioned in subsection (2) above may be made separately in relation to each of the matters for which (in accordance with this subsection) different provision is made in the licence.
- (7) Nothing in subsection (6) above shall be construed as preventing two or more licences from being granted to the same person to be held concurrently in respect of the same source of supply, if the licences authorise the abstraction of water at different points or by different means.

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#### Textual Amendments

**F79** S. 46(4)(5)(5A) substituted for s. 46(4)(5) (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 19(4)**, 105(3); S.I. 2004/641, art. 3(g) (with [Sch. 3 para. 7](#))

### [<sup>F80</sup> **46A Limited extension of abstraction licence validity**

- (1) If the condition in subsection (2) below is met, a full licence or a transfer licence whose term exceeded twelve months but whose expiry date (“the expiry date”) has passed shall be treated for all the purposes of this Act as not expiring until the date mentioned in subsection (4) below.
- (2) The condition is that the Agency receives, not later than the beginning of the period of three months ending on the expiry date (or such later date before the expiry date as the Agency agrees), a valid application for a new licence—
  - (a) for abstraction from the same point as the abstraction licensed by the expiring licence;
  - (b) whose holder would be the same as the holder of the expiring licence; and
  - (c) which would take effect immediately after the expiry date.
- (3) For the purposes of subsection (2) above, a “valid” application is one which complies with all the requirements of this Act in relation to the making of applications for licences of the type in question.
- (4) The date referred to in subsection (1) above is whichever is the later of—
  - (a) if a new licence is granted (whether or not on the terms applied for), the date on which it takes effect;
  - (b) otherwise—
    - (i) except where the Secretary of State calls in an application under section 41 above, the expiry of the period for appealing under section 43 above, or if an appeal is brought, the date of its withdrawal; or
    - (ii) where the Secretary of State decides (under section 42 or 44 above) that no licence is to be granted, the date on which that decision is notified to the applicant.]

#### Textual Amendments

**F80** S. 46A inserted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 20**, 105(3); S.I. 2004/641, art. 3(g) (with [Sch. 3 paras. 2, 7](#))

### **47 Holders of licence.**

- (1) Every licence under this Chapter to abstract water shall specify the person to whom the licence is granted.
- (2) The person to whom a licence under this Chapter is granted to abstract water or to obstruct or impede any inland waters and, in the case of a licence to obstruct or impede any inland waters, no other person is the holder of the licence for the purposes of this Act.

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- (3) This section has effect subject to sections 49, 50 and 67 below and to any power under this Chapter to vary licences.

#### 48 General effect of licence.

- (1) For the purposes of this Chapter a person who is for the time being the holder of a licence under this Chapter to abstract water shall be taken to have a right to abstract water to the extent authorised by the licence and in accordance with the provisions contained in it.
- (2) In any action brought against a person in respect of the abstraction of water from a source of supply [<sup>F81</sup>(other than an abstraction in respect of which a claim could be brought under section 48A below, in which case that section shall apply)], it shall be a defence, subject to paragraph 2 of Schedule 7 to this Act, for him to prove—
- (a) that the water was abstracted in pursuance of a licence under this Chapter; and
  - (b) that the provisions of the licence were complied with.
- (3) In any action brought against a person in respect of any obstruction or impeding of the flow of any inland waters at any point by means of impounding works, it shall be a defence for him to prove—
- (a) that the flow was so obstructed or impeded in pursuance of a licence under this Chapter;
  - (b) that the obstructing or impeding was in the manner specified in that licence and to an extent not exceeding the extent so specified; and
  - (c) that the other requirements of the licence (if any) were complied with.
- (4) Nothing in subsection (2) or (3) above shall exonerate a person from any action for negligence or breach of contract.

##### Textual Amendments

**F81** Words in s. 48(2) inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 24(2)**, 105(3) (with s. 24(3)(b)); [S.I. 2004/641](#), art. 5 (with [Sch. 3 paras. 4, 7](#))

##### Modifications etc. (not altering text)

**C10** S. 48(1) modified (1.4.2005) by [The Water Act 2003 \(Commencement No. 4, Transitional Provisions and Savings\) Order 2005 \(S.I. 2005/968\)](#), art. 4(1)(3), [Sch. 1 paras. 7\(10\)](#), **8(3)**

#### [<sup>F82</sup>48A Civil remedies for loss or damage due to water abstraction

- (1) Subject to subsection (7) below and to section 79 (including that section as applied by section 79A(9)) below, a person who abstracts water from any inland waters or underground strata (an “abstractor”) shall not by that abstraction cause loss or damage to another person.
- (2) A person who suffers such loss or damage (a “relevant person”) may bring a claim against the abstractor.
- (3) Such a claim shall be treated as one in tort for breach of statutory duty.

*Status: Point in time view as at 01/04/2005.*

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- (4) In proceedings in respect of a claim under this section, the court may not grant an injunction against the abstractor if that would risk interrupting the supply of water to the public, or would put public health or safety at risk.
- (5) Except as provided in this section, no claim may be made in civil proceedings by a person (whether or not a relevant person) against an abstractor in respect of loss or damage caused by his abstraction of water.
- (6) Nothing in this section prevents or affects a claim for negligence or breach of contract.
- (7) This section does not apply, and no claim may be brought under this section, where the loss or damage is caused by an abstractor acting in pursuance of a licence under this Chapter and is loss or damage—
  - (a) in respect of which a person is entitled to bring a claim under section 60 below (or would be so entitled if there were a breach of the duty referred to in that section);
  - (b) in respect of which a person would have been entitled to bring a claim under section 60 below but for an express provision (including, for example, section 39(1A) above and section 59C(6) below) disapplying that duty; or
  - (c) constituting grounds on which a person is entitled to apply to the Secretary of State under section 55 below (or would be so entitled but for subsection (2) of that section) for the revocation or variation of that licence,
 but without prejudice to the application of section 48 above.]

#### Textual Amendments

**F82** S. 48A inserted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 24(1)**, 105(3) (with [s. 24\(3\)\(a\)](#)); [S.I. 2004/641](#), [art. 5](#) (with [Sch. 3 paras. 4, 7](#))

### *Succession to licences*

#### **49 Succession to licences to abstract where person ceases to occupy the relevant land.**

- (1) This section applies to a case where the holder of a licence under this Chapter to abstract water (“the prior holder”) is the occupier of the whole of the land specified in the licence as the land on which water abstracted in pursuance of the licence is to be used (“the relevant land”).
- (2) If—
  - (a) the prior holder dies or, by reason of any other act or event, ceases to be the occupier of the whole of the relevant land and does not continue to be the occupier of any part of that land; and
  - (b) either immediately after the death of the prior holder or the occurrence of that other act or event or subsequently, another person (“the successor”) becomes the occupier of the whole of the relevant land,
 the prior holder shall cease (if he would not otherwise do so) to be the holder of the licence and the successor shall become the holder of the licence.
- (3) Where the successor becomes the holder of a licence under subsection (2) above, he shall cease to be the holder of the licence at the end of the period of fifteen months

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beginning with the date on which he became the occupier of the relevant land unless before the end of that period he has given to the [<sup>F83</sup>Agency] notice of the change in the occupation of the relevant land.

- (4) Where any person who becomes the holder of a licence by virtue of the provisions of this section gives notice to the [<sup>F83</sup>Agency] in accordance with those provisions, the [<sup>F83</sup>Agency] shall vary the licence accordingly.
- (5) Where, by virtue of the provisions of this section, any person ceases to be the holder of a licence in such circumstances that no other person thereupon becomes the holder of it, the licence shall cease to have effect.
- (6) The preceding provisions of this section shall have effect without prejudice to any power to revoke or vary licences under this Chapter or to the powers conferred by section 50 below.

#### Textual Amendments

**F83** Words in s. 49 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

## 50 Succession where person becomes occupier of part of the relevant land.

- (1) The Secretary of State may by regulations make provision, in relation to [<sup>F84</sup>cases in which the holder of a licence under this Chapter to abstract water (“the prior holder”) is the occupier of the whole or part of the land specified in the licence as the land on which water abstracted in pursuance of the licence is to be used (“the relevant land”)], for conferring succession rights, in such circumstances as may be specified in the regulations, on a person who becomes the occupier of part of the relevant land after—
  - (a) the death of the prior holder; or
  - (b) the occurrence of any other act or event whereby the prior holder ceases to be the occupier of the relevant land or of part of that land.
- (2) For the purposes of subsection (1) above succession rights are—
  - (a) a right to become the holder of the licence, subject to provisions corresponding to subsection (3) of section 49 above; or
  - (b) a right to apply for, and to the grant of, a new licence containing provisions (as to quantities of water and otherwise) determined, in accordance with the regulations made by the Secretary of State, by reference to the provisions of the original licence.
- (3) The Secretary of State may by regulations make provision for conferring on the prior holder, where he—
  - (a) continues to be the occupier of part of the relevant land; but
  - (b) ceases to be the occupier of another part of that land,a right, in such circumstances as may be specified in the regulations, to apply for, and to the grant of, a new licence containing such provisions as are mentioned in subsection (2)(b) above.
- (4) Regulations under this section may provide that the provisions of this Chapter shall have effect in relation—
  - (a) to an application for a licence made by virtue of the regulations; or

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- (b) to a person entitled to make such an application,  
subject to such modifications as may be specified in the regulations.
- (5) Where any person who becomes the holder of a licence by virtue of the provisions of any regulations under this section gives notice to the [<sup>F85</sup>Agency] in accordance with those provisions, the [<sup>F85</sup>Agency] shall vary the licence accordingly.
- (6) Where, by virtue of the provisions of any regulations under this section, any person ceases to be the holder of a licence in such circumstances that no other person thereupon becomes the holder of it, the licence shall cease to have effect.
- (7) The preceding provisions of this section shall have effect without prejudice to the exercise of any power to revoke or vary licences under this Chapter.

#### Textual Amendments

- F84** Words in s. 50(1) substituted (retrospective to 1.12.1991) by 1995 c. 25, ss. 120(1), 125(3), **Sch. 22 para. 135** (with ss. 7(6), 115, 117)
- F85** Word in s. 50 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### *Modification of licences*

### 51 Modification on application of licence holder.

- (1) The holder of a licence under this Chapter may apply to the [<sup>F86</sup>Agency] to revoke the licence and, on any such application, the [<sup>F86</sup>Agency] shall revoke the licence accordingly.
- (2) The holder of a licence under this Chapter may apply to the [<sup>F86</sup>Agency] to vary the licence.
- (3) Subject to subsection (4) below, the provisions of sections 37 to 44 above shall apply (with the necessary modifications) to applications under subsection (2) above, and to the variation of licences in pursuance of such applications, as they apply to applications for, and the grant of, licences under this Chapter.
- (4) Where the variation proposed in an application under subsection (2) above is limited to reducing the quantity of water authorised to be abstracted in pursuance of the licence during one or more periods—
  - (a) sections 37 and 38(1) above shall not apply by virtue of subsection (3) above; and
  - (b) sections 43 and 44 above, as applied by that subsection, shall have effect as if subsection (5) of section 43 and paragraph (a) of section 44(3) were omitted.

#### Textual Amendments

- F86** Words in s. 51 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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## **52 Proposals for modification at instance of the [F87 Agency] or Secretary of State.**

- (1) Where it appears to the [F87 Agency] that a licence under this Chapter should be revoked or varied, the [F87 Agency] may formulate proposals for revoking or varying the licence.
- (2) Where—
  - (a) it appears to the Secretary of State (either in consequence of representations made to the Secretary of State or otherwise) that a licence under this Chapter ought to be reviewed; but
  - (b) no proposals for revoking or varying the licence have been formulated by the [F87 Agency] under subsection (1) above,the Secretary of State may, as he may consider appropriate in the circumstances, give the [F87 Agency] a direction under subsection (3) below.
- (3) A direction under this subsection may—
  - (a) direct the [F87 Agency] to formulate proposals for revoking the licence in question; or
  - (b) direct the [F87 Agency] to formulate proposals for varying that licence in such manner as may be specified in the direction.
- (4) Notice in the prescribed form of any proposals formulated under this section with respect to any licence shall—
  - (a) be served on the holder of the licence; and
  - (b) be published in the London Gazette and, at least once in each of two successive weeks, in one or more newspapers (other than the London Gazette) circulating in the relevant locality.
- (5) If—
  - (a) a licence with respect to which any proposals are formulated under this section relates to any inland waters; and
  - (b) the proposals provide for variation of that licence,a copy of the notice for the purposes of subsection (4) above shall, not later than the date on which it is first published otherwise than in the London Gazette, be served on any navigation authority, harbour authority or conservancy authority having functions in relation to those waters at a place where the licence, if varied in accordance with the proposals, would authorise water to be abstracted or impounded.
- (6) A notice for the purposes of subsection (4) above, in addition to any other matters required to be contained in that notice, shall—
  - (a) name a place within the relevant locality where a copy of the proposals, and of any map, plan or other document prepared in connection with them, will be open to inspection by the public, free of charge, at all reasonable hours during a period specified in the notice in accordance with subsection (7) below; and
  - (b) state that, at any time before the end of that period—
    - (i) the holder of the licence may give notice in writing to the [F87 Agency] objecting to the proposals; and
    - (ii) any other person may make representations in writing to the [F87 Agency] with respect to the proposals.
- (7) The period specified in a notice for the purposes of subsection (6) above shall be a period which—

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (a) begins not earlier than the date on which the notice is first published in a newspaper other than the London Gazette; and
  - (b) ends not less than twenty-eight days from that date and not less than twenty-five days from the date on which the notice is published in the London Gazette.
- (8) In this section “the relevant locality” means the locality in which the place or places where the licence authorises water to be abstracted or impounded is or are situated.

#### Textual Amendments

**F87** Words in s. 52 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### 53 Modification in pursuance of proposals under section 52.

- (1) Subject to the following provisions of this section, where the [<sup>F88</sup>Agency] has formulated any proposals under section 52 above with respect to any licence under this Chapter, it may—
- (a) if the proposals are for the revocation of the licence, revoke the licence; and
  - (b) if the proposals are proposals for varying the licence, vary the licence in accordance with those proposals or, with the consent of the holder of the licence, in any other way.
- (2) The [<sup>F88</sup>Agency] shall not proceed with any proposals formulated under section 52 above before the end of the period specified, in accordance with subsection (7) of that section, for the purposes in relation to those proposals of subsection (6) of that section.
- (3) If no notice under subsection (4) below is given to the [<sup>F88</sup>Agency] before the end of the period mentioned in subsection (2) above, the [<sup>F88</sup>Agency] may proceed with the proposals.
- (4) If the holder of the licence gives notice to the [<sup>F88</sup>Agency] objecting to the proposals before the end of the period mentioned in subsection (2) above, the [<sup>F88</sup>Agency] shall refer the proposals to the Secretary of State, with a copy of the notice of objection.
- (5) Where the [<sup>F88</sup>Agency] proceeds with any proposals under subsection (3) above and the proposals are proposals for varying the licence, the provisions of sections 38(3), 39(1) and (2) and 40 above shall apply (with the necessary modifications) to any action of the [<sup>F88</sup>Agency] in proceeding with the proposals as they apply to the action of the [<sup>F88</sup>Agency] in dealing with an application for a licence.

#### Textual Amendments

**F88** Words in s. 53 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### 54 Reference of modification proposals to the Secretary of State.

- (1) Where any proposals of the [<sup>F89</sup>Agency] with respect to a licence are referred to the Secretary of State in accordance with subsection (4) of section 53 above, the Secretary of State shall consider—
- (a) the proposals;

*Status: Point in time view as at 01/04/2005.*

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- (b) the objection of the holder of the licence; and
- (c) any representations in writing relating to the proposals which were received by the [F89 Agency] before the end of the period mentioned in subsection (2) of that section,

and, subject to subsection (2) below, shall determine (according to whether the proposals are for the revocation or variation of the licence) the question whether the licence should be revoked or the question whether it should be varied as mentioned in subsection (1)(b) of that section.

- (2) Before determining under this section whether a licence should be revoked or varied in a case in which proposals have been formulated under section 52 above, the Secretary of State may, if he thinks fit—

- (a) cause a local inquiry to be held; or
- (b) afford to the holder of the licence and the [F89 Agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;

and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the holder of the licence or the [F89 Agency] to be heard with respect to the proposals.

- (3) In determining under this section whether a licence should be varied and, if so, what directions should be given under subsection (5) below, the Secretary of State shall consider whether any such direction would require such a variation of the licence as would so authorise—

- (a) the abstraction of water; or
- (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,

as to derogate from rights which, at the time when the direction is given, are protected rights for the purposes of this Chapter.

- (4) The provisions of sections 39(2) and 40 above shall apply in relation to any proposals referred to the Secretary of State in accordance with section 53(4) above as if in those provisions—

- (a) any reference to the [F89 Agency] were a reference to the Secretary of State;
- (b) any reference to the application were a reference to the proposals; and
- (c) the references to sections 38(3) and 39(1) were references to subsections (1) and (3) above.

- (5) Where the decision of the Secretary of State on a reference in accordance with section 53(4) above is that the licence in question should be revoked or varied, the decision shall include a direction to the [F89 Agency] to revoke the licence or, as the case may be, to vary it so as to contain such provisions as may be specified in the direction.

- (6) A decision of the Secretary of State under this section with respect to any proposals shall be final.

#### Textual Amendments

**F89** Words in s. 54 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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## 55 Application for modification of licence by owner of fishing rights.

- (1) Subject to the following provisions of this section and to Schedule 7 to this Act, where a licence under this Chapter authorises abstraction from any inland waters in respect of which no minimum acceptable flow has been determined under Chapter I of this Part, any person who is the owner of fishing rights in respect of those inland waters may apply to the Secretary of State for the revocation or variation of the licence.
- (2) No application shall be made under this section in respect of any licence except at a time after the end of the period of one year beginning with the date on which the licence was granted but before a minimum acceptable flow has been determined in relation to the waters in question.
- (3) Any application under this section made by a person as owner of fishing rights in respect of any inland waters shall be made on the grounds that, in his capacity as owner of those rights, he has sustained loss or damage which is directly attributable to the abstraction of water in pursuance of the licence in question and either—
  - (a) he is not entitled to a protected right for the purposes of this Chapter in respect of those inland waters; or
  - (b) the loss or damage which he has sustained in his capacity as owner of those rights is not attributable to any such breach of statutory duty as is mentioned in subsection (2) or (3) of section 60 below or is in addition to any loss or damage attributable to any such breach.
- (4) Where an application is made under this section in respect of any licence, the applicant shall serve notice in the prescribed form on the [<sup>F90</sup>Agency] and on the holder of the licence, stating that each of them is entitled, at any time before the end of the period of twenty-eight days beginning with the date of service of the notice, to make representations in writing to the Secretary of State with respect to the application.
- (5) In this section and section 56 below “fishing rights”, in relation to any inland waters, means any right (whether it is an exclusive right or a right in common with one or more other persons) to fish in those waters, where the right in question—
  - (a) constitutes or is included in an interest in land; or
  - (b) is exercisable by virtue of an exclusive licence granted for valuable consideration;
 and any reference to an owner of fishing rights is a reference to the person for the time being entitled to those rights.
- (6) In this section any reference to a right included in an interest in land is a reference to a right which is exercisable only by virtue of, and as a right incidental to, the ownership of that interest.

### Textual Amendments

**F90** Word in s. 55 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

## 56 Determination of application under section 55.

- (1) The Secretary of State, in determining any application under section 55 above in respect of any licence, shall take into account any representations in writing received

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by him, within the period mentioned in subsection (4) of that section, from the [F91Agency] or from the holder of the licence.

(2) Before determining on an application under section 55 above whether a licence should be revoked or varied the Secretary of State may, if he thinks fit—

- (a) cause a local inquiry to be held; or
- (b) afford to the applicant, the holder of the licence and the [F91Agency] an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose;

and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by the applicant, the holder of the licence or the [F91Agency] to be heard with respect to the proposals.

(3) Subject to subsections (4) and (5) below, on an application under section 55 above in respect of any licence, the Secretary of State shall not determine that the licence shall be revoked or varied unless—

- (a) the grounds of the application, as mentioned in subsection (3) of that section, are established to his satisfaction; and
- (b) he is satisfied that the extent of the loss or damage which the applicant has sustained, as mentioned in that subsection, is such as to justify the revocation or variation of the licence.

(4) On an application under section 55 above in respect of any licence, the Secretary of State shall not determine that the licence shall be revoked or varied if he is satisfied that the fact that the abstraction of water in pursuance of the licence caused the loss or damage which the applicant has sustained, as mentioned in subsection (3) of that section, was wholly or mainly attributable to exceptional shortage of rain or to an accident or other unforeseen act or event not caused by, and outside the control of, the [F91Agency].

(5) Where the Secretary of State determines, on an application under section 55 above, that a licence shall be varied, the variation shall be limited to that which, in the opinion of the Secretary of State, is requisite having regard to the loss or damage which the applicant has sustained as mentioned in subsection (3) of that section.

(6) Where the decision of the Secretary of State on an application under section 55 above in respect of any licence is that the licence should be revoked or varied, the decision shall include a direction to the [F91Agency] to revoke the licence or, as the case may be, to vary it so as to contain such provisions as may be specified in the direction.

(7) A decision of the Secretary of State on an application under section 55 above shall be final.

#### Textual Amendments

**F91** Words in s. 56 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

## 57 Emergency variation of licences for spray irrigation purposes.

(1) This section applies where at any time—

- (a) one or more licences under this Chapter are in force in relation to a source of supply authorising water abstracted in pursuance of the licences to be used

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- for the purpose of spray irrigation, or for that purpose together with other purposes; and
- (b) by reason of exceptional shortage of rain or other emergency, it appears to the [F92Agency] that it is necessary to impose a temporary restriction on the abstraction of water for use for that purpose.
- (2) Subject to subsections (3) and (4) below, where this section applies the [F92Agency] may serve a notice on the holder of any of the licences reducing, during such period as may be specified in the notice, the quantity of water authorised to be abstracted in pursuance of the licence from the source of supply for use for the purpose of spray irrigation; and, in relation to that period, the licence shall have effect accordingly subject to that reduction.
- (3) The [F92Agency] shall not serve a notice under this section in respect of abstraction of water from underground strata unless it appears to the [F92Agency] that such abstraction is likely to affect the flow, level or volume of any inland waters which are neither discrete waters nor inland waters comprised in an order under section 33 above.
- (4) In the exercise of the power conferred by this section in a case where there are two or more licences under this Chapter in force authorising abstraction from the same source of supply either at the same point or at points which, in the opinion of the [F92Agency], are not far distant from each other—
- (a) the [F92Agency] shall not serve a notice under this section on the holder of one of the licences unless a like notice is served on the holders of the other licences in respect of the same period; and
- (b) the reductions imposed by the notices on the holders of the licences shall be so calculated as to represent, as nearly as appears to the [F92Agency] to be practicable, the same proportion of the quantity of water authorised by the licences (apart from the notices) to be abstracted for use for the purpose of spray irrigation.
- (5) The provisions of this section shall have effect without prejudice to the exercise of any power conferred by sections 51 to 54 above.

**Textual Amendments**

**F92** Words in s. 57 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**Modifications etc. (not altering text)**

**C11** S. 57 modified (18.5.1992) by S.I. 1992/1096, **art. 4**

**C12** S. 57(1)(2)(4) modified (18.5.1992) by S.I. 1992/1096, **arts. 3, 4, Sch.**

<sup>F93</sup>**58** .....

**Textual Amendments**

**F93** S. 58 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 136, Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3(xxix)**

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## **59 Regulations with respect to modification applications.**

- (1) The Secretary of State may by regulations make provision as to the manner in which applications for the revocation or variation of licences under this Chapter are to be dealt with, including provision requiring the giving of notices of, and information relating to, the making of such applications or decisions on any such applications.
- (2) Subsection (1) above shall have effect subject to any express provision contained in, or having effect by virtue of, any other enactment contained in this Chapter; and any regulations made under this section shall have effect subject to any such express provision.

*Remedies and compensation in respect of infringement of protected rights etc.*

## **60 Liability of the [F<sup>94</sup>Agency] for derogation from protected right.**

- (1) A breach of the duty imposed by subsection (1) of section 39 above (including that duty as applied by section 51(3) or 53(5) above) shall neither invalidate the grant or variation of a licence nor be enforceable by any criminal proceedings, by prohibition or injunction or by action against any person other than the [F<sup>94</sup>Agency].
- (2) Instead, the duty referred to in subsection (1) above shall be enforceable, at the suit of any person entitled to a protected right for the purposes of this Chapter, by an action against the [F<sup>94</sup>Agency] for damages for breach of statutory duty.
- (3) Where under any provision of this Chapter, the [F<sup>94</sup>Agency] is directed by the Secretary of State to grant or vary a licence, and the licence, as granted or varied in compliance with the direction, authorises derogation from protected rights, then—
  - (a) the grant or variation of the licence shall, as between the [F<sup>94</sup>Agency] and the person entitled to those rights, have effect as a breach on the part of the [F<sup>94</sup>Agency] of a statutory duty not to authorise derogation from those rights; and
  - (b) subsection (2) above shall apply in relation to that statutory duty as it applies in relation to the duty imposed by section 39(1) above.
- (4) Subsection (3) above shall be without prejudice to the duty of the [F<sup>94</sup>Agency], to comply with the direction in question, but that duty shall not afford any defence in an action brought by virtue of paragraph (b) of that subsection.
- (5) In any action brought against the [F<sup>94</sup>Agency] in pursuance of this section it shall be a defence for the [F<sup>94</sup>Agency] to show that the fact, as the case may be—
  - (a) that the abstraction of water authorised by the licence, as granted or varied by the [F<sup>94</sup>Agency], derogated from the plaintiff's protected right; or
  - (b) that the obstruction or impeding of the flow of the inland waters authorised by the licence, as so granted or varied, derogated from the plaintiff's protected right,was wholly or mainly attributable to exceptional shortage of rain or to an accident or other unforeseen act or event not caused by, and outside the control of, the [F<sup>94</sup>Agency].
- (6) This section has effect subject to the provision made by Schedule 7 to this Act.
- (7) In this section any reference to authorising a derogation from protected rights is a reference to so authorising—
  - (a) the abstraction of water; or

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- (b) the flow of any inland waters to be obstructed or impeded by means of impounding works,  
 as to derogate from rights which, at the time of the authorisation, are protected rights for the purposes of this Chapter.

#### Textual Amendments

**F94** Words in s. 60 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### 61 Compensation where licence modified on direction of the Secretary of State.

- (1) Where a licence is revoked or varied in pursuance of a direction under section 54 or [F9556] above and it is shown that the holder of the licence—
  - (a) has incurred expenditure in carrying out work which is rendered abortive by the revocation or variation; or
  - (b) has otherwise sustained loss or damage which is directly attributable to the revocation or variation,
 the [F96Agency] shall pay him compensation in respect of that expenditure, loss or damage.
- (2) For the purposes of this section, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to any work, shall be taken to be included in the expenditure incurred in carrying out that work.
- (3) Subject to subsection (2) above and to Schedule 7 to this Act, no compensation shall be paid under this section—
  - (a) in respect of any work carried out before the grant of the licence which is revoked or varied; or
  - (b) in respect of any other loss or damage arising out of anything done or omitted to be done before the grant of that licence.
- (4) No compensation shall be payable under this section in respect of a licence to abstract water, if it is shown that no water was abstracted in pursuance of the licence during the period of [F97four] years ending with the date on which notice of the proposals for revoking or varying the licence was served on the holder of the licence.
- (5) Any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal; and in relation to the determination of any such compensation the provisions of sections 2 and 4 of the <sup>M11</sup>Land Compensation Act 1961 shall apply, subject to any necessary modifications.
- (6) For the purpose of assessing any compensation under this section, in so far as that compensation is in respect of loss or damage consisting of depreciation of the value of an interest in land, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.
- (7) Where the interest in land, in respect of which any compensation falls to be assessed in accordance with subsection (6) above, is subject to a mortgage—

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- (a) the compensation shall be assessed as if the interest were not subject to the mortgage;
- (b) a claim for the compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
- (c) no such compensation shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage);
- (d) any such compensation which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

#### Textual Amendments

- F95** Word in s. 61(1) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), s. 105(3), [Sch. 7 para. 6](#); [S.I. 2004/641](#), art. 3(y), [Sch. 2](#) (with [Sch. 3 para. 7](#))
- F96** Word in s. 61 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25](#), s. 120, [Sch. 22 para. 128](#) (with [ss. 7\(6\)](#), 115, 117); [S.I. 1996/186](#), art. 3
- F97** Word in s. 61(4) substituted (1.4.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 25\(2\)](#), 105(3) (with [s. 25\(4\)](#)); [S.I. 2004/641](#), art. 3(h) (with [Sch. 3 para. 7](#))

#### Modifications etc. (not altering text)

- C13** S. 61 modified (1.4.2004) by [Water Act 2003 \(c. 37\)](#), [ss. 27\(2\)](#), 105(3); [S.I. 2004/641](#), art. 3(i) (with [Sch. 3 para. 7](#))

#### Marginal Citations

- M11** [1961 c. 33](#).

### [<sup>F98</sup>61A Recovery of compensation from new licence-holder

- (1) This section applies where compensation has been paid under section 61 above to the holder of a licence (“licence A”) following its revocation, and—
  - (a) the holder of licence A was a water undertaker;
  - (b) at the time of the revocation an application from a qualifying person for a licence to abstract water (“licence B”) was outstanding;
  - (c) if the Agency had granted licence B while licence A still had effect, the Agency would have been in breach of the duty imposed on it by section 39(1) above owed to the holder of licence A;
  - (d) the ground for revoking licence A was that the Agency was of the view that in the interests of greater efficiency in the use of water resources it would be better for licence B to be granted and licence A revoked; and
  - (e) the Agency proposes to grant licence B.
- (2) If this section applies, the Agency may (if licence B is granted) recover from the qualifying person the amount of the compensation referred to in subsection (1) above (or such lesser amount as the Agency determines).
- (3) Subsection (6) of section 41 of the 1995 Act (which confers powers to make schemes imposing charges) shall apply to the amount referred to in subsection (2) above as if it were a charge due and payable to the Agency in respect of the subsistence of licence B.

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- (4) In this section, “qualifying person” means—
- (a) a water undertaker; or
  - (b) a person who has made an application for an appointment or variation replacing a company as a water undertaker under section 8 of the Water Industry Act 1991 which has not been determined.]

#### Textual Amendments

**F98** S. 61A inserted (1.10.2004) by [Water Act 2003 \(c. 37\)](#), ss. 26, 105(3); S.I. 2004/2528, art. 2(a) (with [Sch. paras. 1, 8](#))

## 62 Compensation for owner of fishing rights applying under section 55.

- (1) Where a licence is revoked or varied on an application under section 55 above, the applicant shall be entitled to compensation from the [<sup>F99</sup>Agency] in respect of the loss or damage which he has sustained as mentioned in subsection (3) of that section.
- (2) Where, on an application under section 55 above for the revocation or variation of a licence, the Secretary of State determines—
  - (a) that the grounds of the application (as mentioned in subsection (3) of that section) have been established to his satisfaction; but
  - (b) that the licence shall not be revoked or varied in pursuance of that application, he shall certify accordingly for the purposes of the following provisions of this section.
- (3) Unless within the period of six months from the date on which a certificate under subsection (2) above is granted either—
  - (a) notice to treat for the acquisition of the fishing rights of the applicant, or of an interest in land which includes those rights, has been served by the [<sup>F99</sup>Agency]; or
  - (b) an offer has been made by the [<sup>F99</sup>Agency] to the owner of those rights to acquire them on compulsory purchase terms or, where the rights subsist only as rights included in an interest in land, to acquire that interest on such terms, the owner of the fishing rights shall be entitled to compensation from the [<sup>F99</sup>Agency].
- (4) The amount of the compensation payable under subsection (3) above in respect of any fishing rights shall be the amount by which—
  - (a) the value of those rights; or
  - (b) where they subsist only as rights included in an interest in land, the value of that interest,
 is depreciated by the operation of section 48(2) above in relation to the licence to which the application related.
- (5) Any question of disputed compensation under this section shall be referred to and determined by the Lands Tribunal; and in relation to the determination of any such compensation the provisions of sections 2 and 4 of the <sup>M12</sup>Land Compensation Act 1961 shall apply, subject to any necessary modifications.
- (6) For the purposes of this section a right or interest is acquired on compulsory purchase terms if it is acquired on terms that the price payable shall be equal to and shall, in default of agreement, be determined in like manner as the compensation which would

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be payable in respect thereof if the right or interest were acquired compulsorily by the [<sup>F99</sup>Agency].

(7) Where—

- (a) the Secretary of State, on an application under section 55 above, determines that the licence to which the application relates shall not be revoked or varied and grants a certificate under subsection (2) above; and
- (b) notice to treat for the acquisition of the fishing rights to which the application related, or of an interest in land in which those rights are included, has been served by the [<sup>F99</sup>Agency] within the period of six months from the date on which that certificate is granted,

then, for the purpose of assessing compensation in respect of any compulsory acquisition in pursuance of that notice to treat, no account shall be taken of any depreciation of the value of the fishing rights, or of the interest in question, which is applicable to the operation, in relation to that licence, of section 48(2) above.

- (8) Subsections (5) and (6) of section 55 above shall apply for construing references in this section to fishing rights or to rights included in an interest in land as they have effect for construing such references in that section.

#### Textual Amendments

**F99** Words in s. 62 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M12** 1961 c. 33.

### 63 Secretary of State to indemnify [<sup>F100</sup>Agency] in certain cases.

(1) Where—

- (a) the [<sup>F100</sup>Agency] is liable under section 60 above to pay damages to any person in consequence of the grant or variation of a licence in compliance with a direction given by the Secretary of State; and
- (b) the [<sup>F100</sup>Agency] pay to that person any sum in satisfaction of that liability,

then, whether an action for recovery of those damages has been brought or not, the Secretary of State may, if he thinks fit, pay to the [<sup>F100</sup>Agency] the whole or such part as he considers appropriate of the relevant amount.

(2) If—

- (a) proposals for revoking or varying the licence, in a case falling within subsection (1) above, are formulated by the [<sup>F100</sup>Agency], or an application with respect to any licence is made under section 55 above;
- (b) in consequence of those proposals or that application, the licence is revoked or varied; and
- (c) compensation in respect of the revocation or variation is payable by the [<sup>F100</sup>Agency] under section 61 above,

the Secretary of State may, if he thinks fit, pay to the [<sup>F100</sup>Agency] the whole or such part as he considers appropriate of the relevant amount.

(3) Where—

*Status: Point in time view as at 01/04/2005.*

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- (a) the Secretary of State determines under section 55 above—
    - (i) that a licence granted in compliance with a direction given by the Secretary of State shall be revoked or varied; or
    - (ii) that a licence shall not be revoked or varied;
 and
  - (b) in consequence of that determination, compensation is payable by the [F100Agency] under section 62 above,
- the Secretary of State may, if he thinks fit, pay to the [F100Agency] the whole or such part as he considers appropriate of the relevant amount.
- (4) In this section “the relevant amount” means—
- (a) for the purposes of subsection (1) above, the amount of the sum paid by the [F100Agency] and, if an action has been brought against the [F100Agency] in respect of the liability mentioned in that subsection, the amount of any costs reasonably incurred by the [F100Agency] in connection with the action (including any costs of the plaintiff which the [F100Agency] was required to pay); and
  - (b) for the purposes of subsections (2) and (3) above, the amount of the compensation and, if any question relating to that compensation is referred to the Lands Tribunal, the amount of any costs reasonably incurred by the [F100Agency] in connection with that reference (including any costs of the claimant which the [F100Agency] is required to pay).

#### Textual Amendments

**F100** Words in s. 63 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### *Supplemental provisions of Chapter II*

#### **64 Abstracting and impounding by the [F101Agency].**

- (1) The provisions of this Chapter shall have effect—
- (a) in relation to the abstraction of water by the [F101Agency] from sources of supply; and
  - (b) in relation to the construction or alteration by the [F101Agency] of impounding works,
- subject to such exceptions and modifications as may be prescribed.
- (2) Regulations under this section may, in particular, provide for securing—
- (a) that any licence required by the [F101Agency] in relation to the matters mentioned in subsection (1) above shall be granted (or be deemed to be granted) by the Secretary of State, and not be granted by the [F101Agency];
  - (b) that, in such cases and subject to such conditions as may be prescribed, any licence so required by the [F101Agency] shall be deemed to be granted by the Secretary of State unless the Secretary of State requires an application for the licence to be made to him by the [F101Agency]; and

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- (c) that where a licence is deemed to be granted as mentioned in paragraph (b) above, the [<sup>F101</sup>Agency] shall give such notice of that fact as may be prescribed.
- (3) Without prejudice to the preceding provisions of this section, section 52 above shall not apply in relation to any licence which by virtue of any regulations under this section is granted or deemed to have been granted by the Secretary of State, except in accordance with regulations under this section.

#### Textual Amendments

**F101** Words in s. 64 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### 65 Licences of right.

Schedule 7 to this Act shall have effect for the purposes of giving effect to provisions conferring an entitlement to licences under this Chapter and with respect to licences granted in pursuance of that entitlement or the entitlement conferred by section 33 of the <sup>M13</sup>Water Resources Act 1963 or paragraph 30 or 31 of Schedule 26 to the <sup>M14</sup>Water Act 1989.

#### Marginal Citations

**M13** 1963 c. 38.

**M14** 1989 c. 15.

### 66 Inland waters owned or managed by British Waterways Board.

- (1) This section applies to all inland waters owned or managed by the British Waterways Board ("the Board"), except any such inland waters to which the Secretary of State may by order made by statutory instrument direct that this section shall not apply.
- (2) In respect of abstraction from any inland waters to which this section applies—
- (a) no person other than the Board or a person authorised for the purpose by the Board may be given a consent for the purposes of section 27(2) above;
  - (b) no person other than the Board shall be entitled to apply for a licence under this Chapter;
  - (c) in relation to any application by the Board for a licence under this Chapter—
    - (i) section 35 above shall not apply; and
    - (ii) section 37 above shall apply as if subsection (1) of that section did not require the service of any copy of the notice mentioned in paragraph (a) of that subsection on any navigation authority, harbour authority, conservancy authority or drainage board.
- (3) Before making an order under subsection (1) above, the Secretary of State shall consult the Board and the [<sup>F102</sup>Agency].

*Status: Point in time view as at 01/04/2005.*

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### Textual Amendments

**F102** Word in s. 66 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

## 67 Ecclesiastical property.

- (1) Where the relevant land belongs to a benefice—
  - (a) an application for a licence under this Chapter may be made by the Church Commissioners if the benefice is for the time being vacant; and
  - (b) any reference in this Chapter to the applicant for a licence shall be construed—
    - (i) in relation to any time when the benefice in question is vacant, as a reference to the Church Commissioners; and
    - (ii) in relation to any time when there is an incumbent of the benefice, as a reference to that incumbent.
- (2) Where the relevant land belongs to a benefice, any licence under this Chapter shall provide that (notwithstanding anything in the preceding provisions of this Chapter) whoever is for the time being the incumbent of the benefice shall be the holder of the licence.
- (3) Where a licence under this Chapter provides as mentioned in subsection (2) above—
  - (a) the licence shall not be required to specify the person to whom the licence is granted; and
  - (b) the licence shall be deemed to be held by the Church Commissioners at any time when the benefice in question is vacant.
- (4) So much of any compensation falling to be paid under this Chapter as is payable—
  - (a) in respect of damage to land which is ecclesiastical property and to the owner of the fee simple in the land; or
  - (b) in respect of depreciation of the value of the fee simple in land which is ecclesiastical property,
 shall be paid (where the fee simple is vested in any person other than the Church Commissioners) to them, instead of to the person in whom the fee simple is vested.
- (5) Any sums paid under subsection (4) above to the Church Commissioners with reference to any land shall—
  - (a) if the land is not consecrated, be applied by them for the purposes for which the proceeds of a sale by agreement of the fee simple in the land would be applicable under any enactment or Measure authorising such a sale or disposing of the proceeds of such a sale; and
  - (b) if the land is consecrated, be applied by them in such manner as they may determine.
- (6) Where—
  - (a) the Church Commissioners are required, by virtue of subsection (3)(b) above, to pay any fee or other charge in respect of a licence under this Chapter; and
  - (b) any moneys are then payable by the Commissioners to the incumbent of the benefice in question or subsequently become so payable,
 the Commissioners shall be entitled to retain out of those moneys an amount not exceeding the amount of that fee or other charge.

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- (7) Where under any provision of this Chapter a document is required to be served on an owner of land and the land is ecclesiastical property, a copy of the document shall be served on the Church Commissioners.
- (8) In this section —
- “benefice” means an ecclesiastical benefice of the Church of England;
  - “ecclesiastical property” means land which—
    - (a) belongs to a benefice;
    - (b) is or forms part of a church subject to the jurisdiction of the bishop of any diocese of the Church of England or the site of a church so subject; or
    - (c) is or forms part of a burial ground so subject;
  - and
  - “the relevant land”, in relation to a licence under this Chapter or an application for such a licence, means—
    - (a) the land on which water abstracted in pursuance of the licence is to be, or is proposed to be, used; or
    - (b) in the case of a licence for the purposes of section 25 above or an application for such a licence—
      - (i) the land on which any part of the impounding works is to be, or is proposed to be, constructed; or
      - (ii) in relation to an alteration of impounding works, the land on which any part of those works is situated or is to be, or is proposed to be, situated.

**F103** 68

#### Textual Amendments

**F103** S. 68 repealed (21.9.1995) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 138, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

## 69 Validity of decisions of Secretary of State and related proceedings.

- (1) Except as provided by the following provisions of this section, the validity of a decision of the Secretary of State on—
- (a) any appeal to the Secretary of State under this Chapter; or
  - (b) any reference to the Secretary of State in pursuance of a direction under section 41 above or in pursuance of section 53(4) above,
- shall not be questioned in any legal proceedings whatsoever.
- (2) If, in the case of any such appeal or reference, the [<sup>F104</sup>Agency] or the other party desires to question the validity of the decision of the Secretary of State on the grounds—
- (a) that the decision is not within the powers of this Act; or
  - (b) that any of the requirements of, or of any regulations made under, this Chapter which are applicable to the appeal or reference have not been complied with,

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the [<sup>F104</sup>Agency] or, as the case may be, the other party may, at any time within the period of six weeks beginning with the date on which the decision is made, make an application to the High Court under this section.

- (3) On any application under this section, the High Court may by interim order suspend the operation of the decision to which the application relates until the final determination of the proceedings.
- (4) If the High Court is satisfied, on an application under this section—
- (a) that the decision to which the application relates is not within the powers of this Act; or
  - (b) that the interests of the person making the application under this section have been substantially prejudiced by a failure to comply with any of the requirements mentioned in subsection (2)(b) above,
- the High Court may quash the decision.

<sup>F105</sup>(5) .....

(6) In this section—

“decision” includes a direction; and  
 “other party” —

- (a) in relation to an appeal, means the appellant;
- (b) in relation to a reference in pursuance of a direction under section 41 above, means the applicant for the licence or, where that section applies by virtue of section 51(3) above, for the revocation or variation; and
- (c) in relation to a reference in pursuance of section 53(4) above, means (subject, without prejudice to their application to the other provisions of this Chapter, to subsections (6) and (7) of section 25 above) the holder of the licence.

#### Textual Amendments

**F104** Words in s. 69 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F105** S. 69(5) repealed (21.9.1995) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 138, Sch. 24** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

## 70 Civil liability under Chapter II.

Except in so far as this Act otherwise expressly provides and subject to the provisions of section 18 of the <sup>M15</sup>Interpretation Act 1978 (which relates to offences under two or more laws), the restrictions imposed by sections 24, 25 and 30 above shall not be construed as—

- (a) conferring a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of those restrictions;
- (b) affecting any restriction imposed by or under any other enactment, whether contained in a public general Act or in a local or private Act; or
- (c) derogating from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Chapter.

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#### Marginal Citations

M15 1978 c. 30.

## 71 Modification of local enactments.

- (1) If it appears to the Secretary of State by whom an order is made under a provision of this Chapter to which this section applies that any local enactment passed or made before the relevant date—
  - (a) is inconsistent with any of the provisions of that order; or
  - (b) requires to be amended or adapted, having regard to any of the provisions of that order,the Secretary of State may by order repeal, amend or adapt that enactment to such extent, or in such manner, as he may consider appropriate.
- (2) Any order under this section may include such transitional, incidental, supplementary and consequential provisions as the Secretary of State may consider necessary or expedient.
- (3) The power to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) This section applies to the following provisions of this Chapter, that is to say, sections 33, 66, 68 and 72(5).
- (5) In this section—

“local enactment” means—

  - (a) a local or private Act;
  - (b) a public general Act relating to London;
  - (c) an order or scheme made under an Act, confirmed by Parliament or brought into operation in accordance with special parliamentary procedure; or
  - (d) an enactment in a public general Act amending a local or private Act or any such order or scheme;

“relevant date” means the date which was the second appointed day for the purposes of section 133 of the <sup>M16</sup>Water Resources Act 1963.
- (6) The provisions of this section shall have effect without prejudice to the exercise of any other power to repeal, amend or adapt local enactments which is conferred by any other enactment.

#### Marginal Citations

M16 1963 c. 38.

## 72 Interpretation of Chapter II.

- (1) In this Chapter—

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“derogate”, in relation to a protected right, shall be construed in accordance with section 39(4) above;

“flow” shall be construed subject to section 23(3) above;

“impounding works” has the meaning given by section 25(8) above;

“licence”, in relation to the variation or revocation of a licence, shall be construed subject to section 25(6) and (7) above;

“protected right” shall be construed in accordance with [F106]section 39A] above;

“the restriction on abstraction” means the restriction imposed by section 24(1) above;

“the restriction on impounding works” means the restriction imposed by section 25(1) above;

“spray irrigation” means (subject to subsection (5) below) the irrigation of land or plants (including seeds) by means of water or other liquid emerging (in whatever form) from apparatus designed or adapted to eject liquid into the air in the form of jets or spray; and

“statutory provision” means a provision (whether of a general or special nature) which is contained in, or in any document made or issued under, any Act (whether of a general or special nature).

(2) References in this Chapter to a watercourse shall not include references—

- (a) to any sewer or part of a sewer vested in—
  - (i) a sewerage undertaker;
  - (ii) a local authority or joint planning board;
  - (iii) the Commission for the New Towns or a development corporation for a new town;
  - (iv) a harbour board within the meaning of the <sup>M17</sup>Railway and Canal Traffic Act 1888;

or

- (b) to any adit or passage constructed in connection with a well, borehole or other similar work for facilitating the collection of water in the well, borehole or work.

(3) Any reference in this Chapter to the doing of anything in pursuance of a licence under this Chapter is a reference to its being done—

- (a) by the holder of such a licence; or
- (b) by a person acting as a servant or agent of, or otherwise under the authority of, the holder of such a licence,

at a time when the licence is in force and in circumstances such that, if no such licence were in force, the doing of that thing would contravene a restriction imposed by this Chapter.

(4) For the purposes of this Chapter land shall be taken to be contiguous to any inland waters notwithstanding that it is separated from those waters by a towpath or by any other land used, or acquired for use, in connection with the navigation of the inland waters, unless that other land comprises any building or works other than a lock, pier, wharf, landing-stage or similar works.

(5) The Ministers may by order direct that references to spray irrigation in this Chapter, and in any other enactments in which “spray irrigation” is given the same meaning as in this Chapter, or such of those references as may be specified in the order—

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- (a) shall be construed as not including spray irrigation if carried out by such methods or in such circumstances or for such purposes as may be specified in the order; and
  - (b) without prejudice to the exercise of the power conferred by virtue of paragraph (a) above, shall be construed as including references to the carrying out, by such methods or in such circumstances or for such purposes as may be specified in the order, of irrigation of any such description, other than spray irrigation, as may be so specified.
- (6) The power of the Ministers to make an order under subsection (5) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

**F106** Words in s. 72(1) substituted (1.4.2005) by [Water Act 2003 \(c. 37\)](#), **ss. 17(2)**, 105(3); S.I. 2005/968, art. 2(d) (with [Sch. 1 para. 2](#))

#### Modifications etc. (not altering text)

**C14** S. 72(2)(a) applied (with modifications) (4.6.1996) by [S.I. 1996/1243](#), art. 18, **Sch. 5 Pt. II para. 6(2)** (a)

#### Marginal Citations

**M17** 1888 c. 25.

## CHAPTER III

### DROUGHT

#### 73 Power to make ordinary and emergency drought orders.

[<sup>F107</sup>(1) If the Secretary of State is satisfied that, by reason of an exceptional shortage of rain, there exists or is threatened—

- (a) a serious deficiency of supplies of water in any area, or
- (b) such a deficiency in the flow or level of water in any inland waters as to pose a serious threat to any of the flora or fauna which are dependent on those waters,

then,], subject to the following provisions of this Chapter, he may by order (in this Chapter referred to as an “ordinary drought order”) make such provision authorised by this Chapter as appears to him to be expedient with a view to meeting the deficiency.

(2) If the Secretary of State—

- (a) is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened; and
- (b) is further satisfied that the deficiency is such as to be likely to impair the economic or social well-being of persons in the area,

then, subject to the following provisions of this Chapter, he may by order (in this Chapter referred to as an “emergency drought order”) make such provision authorised by this Chapter as appears to him to be expedient with a view to meeting the deficiency.

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- (3) Subject to section 76(3) below, the power to make a drought order in relation to any area shall not be exercisable [<sup>F108</sup>unless] an application is made to the Secretary of State—
- (a) by the [<sup>F109</sup>Agency]; or
  - (b) [<sup>F110</sup>except in the case of an ordinary drought order by virtue of subsection (1) (b) above,]by a water undertaker which supplies water to premises in that area.
- (4) The power to make a drought order shall be exercisable by statutory instrument; and Schedule 8 to this Act shall have effect with respect to the procedure on an application for such an order.

#### Textual Amendments

- F107** Words in s. 73(1) substituted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 139(2)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**
- F108** Words in s. 73 substituted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 139(3)(a)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**
- F109** Word in s. 73 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F110** Words in s. 73 inserted (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 139(3)(b)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

## 74 Provisions and duration of ordinary drought order.

- (1) An ordinary drought order made on the application of the [<sup>F111</sup>Agency] may contain any of the following provisions, that is to say—
- (a) provision authorising the [<sup>F111</sup>Agency] (or persons authorised to do so by the [<sup>F111</sup>Agency]) to take water from any source specified in the order subject to any conditions or restrictions so specified;
  - (b) provision authorising the [<sup>F111</sup>Agency] (or persons authorised to do so by the [<sup>F111</sup>Agency]) to discharge water to any place specified in the order subject to any conditions or restrictions so specified;
  - (c) provision authorising the [<sup>F111</sup>Agency] to prohibit or limit the taking by any person (including a water undertaker) of water from a source specified in the order if the [<sup>F111</sup>Agency] is satisfied that the taking of water from that source seriously affects the supplies available to the [<sup>F111</sup>Agency], any water undertaker or any other person;
  - (d) provision suspending or modifying, subject to any conditions specified in the order, any restriction or obligation to which the [<sup>F111</sup>Agency], any water undertaker or sewerage undertaker or any other person is subject as respects—
    - (i) the taking of water from any source;
    - (ii) the discharge of water;
    - (iii) the supply of water (whether in point of quantity, pressure, quality, means of supply or otherwise); or
    - (iv) the filtration or other treatment of water;
  - (e) provision authorising the [<sup>F111</sup>Agency] to suspend or vary, or attach conditions to, any consent specified in the order for the discharge of any effluent by any person, including any sewerage undertaker or water undertaker.

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- (2) An ordinary drought order made on the application of a water undertaker may contain any of the following provisions, that is to say—
- (a) provision authorising the water undertaker to take water from any source specified in the order subject to any conditions or restrictions so specified;
  - (b) provision authorising the water undertaker to prohibit or limit the use of water for any purpose specified in the order, being a purpose for the time being set out in a direction given by the Secretary of State to water undertakers generally as a purpose which may be specified by virtue of this paragraph in any ordinary drought order;
  - (c) provision authorising the water undertaker to discharge water to any place specified in the order subject to any conditions or restrictions so specified;
  - (d) provision authorising the [FIII Agency] to prohibit or limit the taking by any person of water from a source specified in the order if the [FIII Agency] is satisfied that the taking of water from that source seriously affects the supplies available to the water undertaker;
  - (e) provision prohibiting or limiting the taking by the [FIII Agency] of water from a source specified in the order if the taking of water from that source is determined, in accordance with provision made by the order, seriously to affect the supplies available to the water undertaker;
  - (f) provision suspending or modifying, subject to any conditions specified in the order, any restriction or obligation to which the water undertaker or any sewerage undertaker or other person is subject as respects—
    - (i) the taking of water from any source;
    - (ii) the discharge of water;
    - (iii) the supply of water (whether in point of quantity, pressure, quality, means of supply or otherwise); or
    - (iv) the filtration or other treatment of water;
  - (g) provision authorising the [FIII Agency] to suspend or vary, or attach conditions to, any consent specified in the order for the discharge of any effluent by any person, including the company which applied for the order (whether in the capacity in which it made the application, in its capacity as a sewerage undertaker or in any other capacity).
- (3) The period for which—
- (a) an authorisation given by or under an ordinary drought order;
  - (b) a prohibition or limitation imposed by or under any such order; or
  - (c) a suspension or modification effected by or under any such order,
- has effect shall expire before the end of the period of six months beginning with the day on which the order comes into force, unless that period of six months is extended, in relation to that order, by virtue of the exercise by the Secretary of State of his power (subject to subsection (4) below) to amend the order.
- (4) The power of the Secretary of State to amend an ordinary drought order shall not be exercised so as to extend the period of six months mentioned in subsection (3) above beyond the end of the period of one year beginning with the day on which that order came into force.
- (5) Without prejudice to the following provisions of this Chapter, an ordinary drought order may—

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- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

#### Textual Amendments

**F111** Words in s. 74 substituted (subject to other provisions of the amending act) (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 128 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

### 75 Provisions and duration of emergency drought order.

- (1) An emergency drought order made on the application of the [<sup>F112</sup>Agency] may contain any of the provisions which could be included, by virtue of section 74(1) above, in an ordinary drought order made on the application of the [<sup>F112</sup>Agency].
- (2) An emergency drought order made on the application of a water undertaker may contain any of the following provisions, that is to say—
  - (a) any provision which could be included, by virtue of subsection (2) of section 74 above, in an ordinary drought order made on the application of a water undertaker, except provision authorised by paragraph (b) of that subsection;
  - (b) provision authorising the water undertaker to prohibit or limit the use of water for such purposes as the water undertaker thinks fit;
  - (c) provision authorising the water undertaker—
    - (i) to supply water in its area, or in any place within its area, by means of stand-pipes or water tanks; and
    - (ii) to erect or set up and maintain stand-pipes or water tanks in any street in that area.
- (3) The period for which—
  - (a) an authorisation given by or under an emergency drought order;
  - (b) a prohibition or limitation imposed by or under any such order; or
  - (c) a suspension or modification effected by or under any such order,
 has effect shall expire before the end of the period of three months beginning with the day on which the order comes into force unless that period of three months is extended, in relation to that order, by virtue of the exercise by the Secretary of State of his power (subject to subsection (4) below) to amend the order.
- (4) The power of the Secretary of State to amend an emergency drought order shall not be exercised so as to extend the period of three months mentioned in subsection (3) above beyond the end of the period of five months beginning with the day on which that order came into force.
- (5) Where powers have been conferred by an emergency drought order on any person—
  - (a) the Secretary of State may give to that person such directions as he considers necessary or expedient as to the manner in which, or the circumstances in which, any of those powers is or is not to be exercised;
  - (b) it shall be the duty of that person to comply with any such direction; and

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- (c) where that person is a water undertaker or sewerage undertaker, the duty to comply with any such direction shall be enforceable under section 18 of the <sup>M18</sup>Water Industry Act 1991 by the Secretary of State.
- (6) The giving of a direction under subsection (5) above in relation to any power shall not affect—
  - (a) the validity of anything done in the exercise of that power before the giving of the direction; or
  - (b) any obligation or liability incurred before the giving of the direction.
- (7) Without prejudice to the following provisions of this Chapter, an emergency drought order may—
  - (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.

#### Textual Amendments

**F112** Words in [s. 75](#) substituted (subject to other provisions of the amending act) (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 128](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186, art. 3](#)

#### Marginal Citations

**M18** [1991 c. 56](#).

## 76 Provisions of drought order restricting use of water.

- (1) The following provisions apply where a drought order contains a provision authorising a water undertaker to prohibit or limit the use of water, that is to say—
  - (a) the power may be exercised in relation to consumers generally, a class of consumer or a particular consumer;
  - (b) the water undertaker shall take such steps as it thinks appropriate for bringing the prohibition or limitation to the attention of the persons to whom the prohibition or limitation will apply and, in particular, shall (as the undertaker thinks appropriate)—
    - (i) cause notice of the prohibition or limitation to be published in one or more local newspapers circulating within that part of the water undertaker's area which would be affected by the provision of the order; or
    - (ii) send notice of the prohibition or limitation to the persons to whom the prohibition or limitation will apply;
  - (c) the prohibition or limitation shall not come into operation until the end of the period of seventy-two hours beginning with the day on which the notice is published or, as the case may be, sent to the person in question.
- (2) The Secretary of State may revoke or vary any direction given by him for the purposes of section 74(2)(b) above by a further direction for those purposes.
- (3) Where any purpose set out in a direction given for the purposes of section 74(2)(b) above will cease, by virtue of the variation or revocation of the direction, to be one which may be specified in an ordinary drought order, the Secretary of State shall

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(without an application having been made to him) exercise his power to vary or revoke ordinary drought orders, in so far as any orders in force will be affected by the variation or revocation of the direction, so as to make those orders conform to the variation or reflect the revocation.

- (4) The revocation or variation of a direction under subsection (3) above shall not affect either—
- (a) the validity of anything done in pursuance of an order before the giving of the further direction; or
  - (b) any obligation or liability accrued or incurred before the giving of the further direction.

## 77 Provisions of drought order with respect to abstractions and discharges.

- (1) Any drought order which—
- (a) authorises the taking of water from a source from which water is supplied to an inland navigation; or
  - (b) suspends or modifies—
    - (i) a restriction as respects the taking of water from a source from which water is supplied to an inland navigation; or
    - (ii) an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation,

may include provision for prohibiting or imposing limitations on the taking of water from the inland navigation or for the suspension or modification of any obligation to which a navigation authority are subject as respects the discharge of water from the inland navigation.

- (2) A prohibition or limitation by or under a drought order on the taking of water from any source may be imposed so as to have effect in relation to a source from which a person to whom the prohibition or limitation applies has a right to take water whether by virtue of an enactment or instrument, an agreement or the ownership of land.
- (3) Where a drought order made on the application of a water undertaker confers power on the [<sup>F113</sup>Agency]—
- (a) to prohibit or limit the taking of water from any source; or
  - (b) to suspend or vary, or attach conditions to, any consent for the discharge of any effluent,
- the [<sup>F113</sup>Agency] shall exercise that power in such manner as will ensure, so far as reasonably practicable, that the supplies of water available to the water undertaker are not seriously affected.

<sup>F114</sup>(4) .....

- (5) Where—
- (a) any drought order confers power on the [<sup>F113</sup>Agency] to suspend or vary, or attach conditions to, any consent for the discharge of any effluent; and
  - (b) the [<sup>F113</sup>Agency] exercises that power so as to restrict the discharge of effluent by a sewerage undertaker,
- the sewerage undertaker may so modify any consents or agreements relating to the discharge by other persons of trade effluent as to enable it to comply with any

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requirements or conditions imposed on it by or under the order with respect to discharges from sewers or works of the undertaker.

(6) In this section—

“compensation water” means water which a water undertaker or the [F113Agency] is under an obligation to discharge—

- (a) in accordance with the provisions of a licence under Chapter II of this Part into a source of supply; or
- (b) under any local statutory provision, into any river, stream, brook or other running water or into a canal;

and

“inland navigation” includes any canal or navigable river.

#### Textual Amendments

**F113** Words in s. 77 substituted (subject to other provisions of the amending act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F114** S. 77(4) repealed (1.4.2004) by Water Act 2003 (c. 37), ss. 64(1), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, **art. 3(o)(z)**

## 78 Works under drought orders.

- (1) A drought order may authorise the [F115Agency] or a water undertaker, subject to any conditions and restrictions specified in the order, to carry out any works required for the performance of any duty or the exercise of any power which is imposed or conferred by or under the order.
- (2) A drought order authorising the [F115Agency] or a water undertaker to carry out any works—
  - (a) may authorise the [F115Agency] or that undertaker for that purpose to enter upon any land specified in the order and to occupy and use the land to such extent and in such manner as may be requisite for the carrying out and maintenance of the works; and
  - (b) may apply in relation to the carrying out of the works such of the provisions of Part VII of this Act or Part VI of the <sup>M19</sup>Water Industry Act 1991 as appear to the Secretary of State to be appropriate, subject to such modifications as may be specified in the order.
- (3) The Secretary of State shall include in any drought order authorising the [F115Agency] or a water undertaker to enter any land provisions requiring the [F115Agency] or that undertaker to give to the occupier of the land and to such other persons concerned with the land as may be specified in the order not less than twenty-four hours' notice of any intended entry.
- (4) Subject to subsection (3) above, a drought order may make any such provision in relation to provisions of the order authorising any person to enter any land as corresponds to provision having effect by virtue of section 173 below or to provision contained in Part II of Schedule 6 to the Water Industry Act 1991.
- (5) Any works to be carried out under the authority of an emergency drought order shall be included in the definition of emergency works in section 52 of the New Roads and Street Works Act 1991.

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- (6) Until the coming into force of section 52 of the <sup>M20</sup>New Roads and Street Works Act 1991, subsection (5) above shall have effect as if the reference to that section were a reference to section 39(1) of the <sup>M21</sup>Public Utilities Street Works Act 1950; but nothing in this section shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing that section 52 into force on different days for different purposes (including the purposes of this section).

#### Textual Amendments

**F115** Words in s. 78 substituted (subject to other provisions of the amending act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M19** 1991 c. 56.

**M20** 1991 c. 22.

**M21** 1950 c. 39.

## 79 Compensation and charges where drought order made.

- (1) Schedule 9 to this Act shall have effect with respect to the payment of compensation where a drought order has been made.
- (2) Except as provided by Schedule 9 to this Act, neither the [<sup>F116</sup>Agency] nor any water undertaker or sewerage undertaker shall incur any liability to any person for loss or damage sustained by reason of anything done in pursuance of any drought order or of any omission in pursuance of such an order.
- (3) Nothing in any drought order shall affect the right of the [<sup>F116</sup>Agency], a water undertaker or a sewerage undertaker, in the event of an interruption or diminution of the supply of water, to recover any fixed or minimum charge which might have been recovered from any person by the [<sup>F116</sup>Agency] or that undertaker if there had been no such interruption or diminution.
- [<sup>F117</sup>(4) Where a water undertaker makes an application for a drought order, the Agency may recover from the water undertaker any expenses it incurs (whether of a revenue or capital nature)—
  - (a) in connection with any local inquiry held in respect of the application;
  - (b) in the exercise of the Agency's functions so far as their exercise is attributable to the application and (if the order is made) to the order,
 in so far as those expenses have not been recovered (whether from the water undertaker or not) under or by virtue of any other enactment.
- (5) Sections 125 to 129 below shall not apply in respect of any charges which may be made under subsection (4) above.]

#### Textual Amendments

**F116** Words in s. 79 substituted (subject to other provisions of the amending act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F117** S. 79(4)(5) added (1.4.2004) by Water Act 2003 (c. 37), **ss. 64(2)**, 105(3); S.I. 2004/641, **art. 3(o)** (with **Sch. 3 para. 7**)

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**[<sup>F118</sup>79A Drought permits.**

- (1) If the Agency is satisfied that, by reason of an exceptional shortage of rain, a serious deficiency of supplies of water in any area exists or is threatened then, subject to the following provisions of this section, it may, upon the application of a water undertaker which supplies water to premises in that area, issue to that undertaker a drought permit making such provision authorised by this section as appears to the Agency to be expedient with a view to meeting the deficiency.
- (2) A drought permit may contain any of the following provisions, that is to say—
  - (a) provision authorising the water undertaker to which it is issued to take water from any source specified in the permit subject to any conditions or restrictions so specified;
  - (b) provision suspending or modifying, subject to any conditions specified in the permit, any restriction or obligation to which that undertaker is subject as respects the taking of water from any source.
- (3) A drought permit shall specify—
  - (a) the day on which it comes into force; and
  - (b) the period for which, subject to subsections (4) and (5) below, any authorisation given, or suspension or modification effected, by the permit is to have effect.
- (4) Subject to subsection (5) below, the period for which—
  - (a) an authorisation given by a drought permit, or
  - (b) a suspension or modification effected by such a permit,has effect shall expire before the end of the period of six months beginning with the day on which the permit comes into force.
- (5) At any time before the expiration of the period for which such an authorisation, suspension or modification has effect, the Agency may, by giving notice to the water undertaker to which the permit in question was issued, extend that period, but not so as to extend it beyond the end of the period of one year beginning with the day on which the permit came into force.
- (6) A drought permit which—
  - (a) authorises the taking of water from a source from which water is supplied to an inland navigation; or
  - (b) suspends or modifies—
    - (i) a restriction as respects the taking of water from a source from which water is supplied to an inland navigation; or
    - (ii) an obligation to discharge compensation water into a canal or into any river or stream which forms part of, or from which water is supplied to, an inland navigation,shall not be issued without the consent of every navigation authority exercising functions over any or all of the parts of the canal or inland navigation in question which are affected by the permit.
- (7) Schedule 8 to this Act shall have effect with respect to the procedure on an application for a drought permit as it has effect with respect to the procedure on an application for a drought order, but with the following modifications, that is to say—
  - (a) with the substitution for any reference to a drought order of a reference to a drought permit;

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- (b) with the substitution for any reference to the Secretary of State of a reference to the Agency;
- (c) with the omission of the reference to the Agency in the Table in paragraph 1;
- (d) with the insertion, in paragraph 1(3)(c), of a requirement that the notice in question shall specify the address at which any objections are to be made to the Agency; and
- (e) with the omission—
  - (i) of paragraph 2(1)(a) and the word “either” immediately preceding it, and
  - (ii) of paragraph 2(6).

<sup>F119</sup>(8) . . . . .

[ Where a water undertaker makes an application for a drought permit, the Agency may  
<sup>F120</sup>(8A) recover from the water undertaker any expenses it incurs (whether of a revenue or capital nature) in the exercise of its functions so far as their exercise is attributable to—

- (a) the application;
- (b) (if the permit is issued) the permit,

in so far as those expenses have not been recovered (whether from the water undertaker or not) under or by virtue of any other enactment.

(8B) Sections 125 to 129 below shall not apply in respect of any charges which may be made under subsection (8A) above.]

(9) Section 79 above and Schedule 9 to this Act shall apply in relation to drought permits and their issue as they apply in relation to ordinary drought orders and their making.

(10) A drought permit may—

- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (b) contain such supplemental, consequential and transitional provisions as the Agency considers appropriate.

(11) In this section—

“compensation water” has the same meaning as in section 77 above;  
 “drought permit” means a drought permit under this section;  
 “inland navigation” has the same meaning as in section 77 above.]

#### Textual Amendments

**F118** S. 79A inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 140** (with 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F119** S. 79A(8) repealed (1.4.2004) by Water Act 2003 (c. 37), ss. 64(3)(a), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, art. 3(o)(z)

**F120** S. 79A(8A)(8B) inserted (1.4.2004) by Water Act 2003 (c. 37), ss. 64(3)(b), 105(3); S.I. 2004/641, art. 3(o) (with **Sch. 3 para. 7**)

## 80 Offences against drought order.

(1) If any person—

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- (a) takes or uses water in contravention of a prohibition or limitation imposed by or under any drought order or takes or uses water otherwise than in accordance with any condition or restriction [<sup>F121</sup>imposed by or under any drought order or by any drought permit]; or
  - (b) discharges water otherwise than in accordance with any condition or restriction imposed by or under such an order,he shall be guilty of an offence under this section.
- (2) If any person—
  - (a) fails to construct or maintain in good order a gauge, weir or other apparatus for measuring the flow of water which he was required to construct or maintain by any drought order [<sup>F122</sup>or drought permit]; or
  - (b) fails to allow some person authorised for the purpose by or under any such order [<sup>F123</sup>or by virtue of any such permit] to inspect and examine any such apparatus or any records made thereby or kept by that person in connection therewith or to take copies of any such records,he shall be guilty of an offence under this section.
- (3) In any proceedings against any person for an offence under this section it shall be a defence for that person to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (4) A person who is guilty of an offence under this section shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

#### Textual Amendments

- F121** Words in s. 80(1)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 141(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F122** Words in s. 80(2)(a) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 141(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F123** Words in s. 80(2)(b) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 141(c)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

## 81 Interpretation of Chapter III.

In this Chapter—

- (a) references to the taking of water include references to the collection, impounding, diversion or appropriation of water; and
- (b) references to an obligation or to a restriction include references to an obligation or, as the case may be, to a restriction which is imposed by or under any enactment or agreement.

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## PART III

### CONTROL OF POLLUTION OF WATER RESOURCES

#### Modifications etc. (not altering text)

- C15** Pt. III (ss. 82-104) modified (subject to other provisions of the amending Act) (1.2.1996) by 1995 c. 25, s. 5(5)(g) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 2
- C16** Pt. III (ss. 82-104): functions transferred to the Environment Agency (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 2(1)(a)(ii) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- C17** Pt. III: definition of “controlled waters” applied (1.12.1991) by water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(1), 4(2), Sch. 1 para. 1

## CHAPTER I

### QUALITY OBJECTIVES

#### 82 Classification of quality of waters.

- (1) The Secretary of State may, in relation to any description of controlled waters (being a description applying to some or all of the waters of a particular class or of two or more different classes), by regulations prescribe a system of classifying the quality of those waters according to criteria specified in the regulations.
- (2) The criteria specified in regulations under this section in relation to any classification shall consist of one or more of the following, that is to say—
  - (a) general requirements as to the purposes for which the waters to which the classification is applied are to be suitable;
  - (b) specific requirements as to the substances that are to be present in or absent from the water and as to the concentrations of substances which are or are required to be present in the water;
  - (c) specific requirements as to other characteristics of those waters;
 and for the purposes of any such classification regulations under this section may provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed.

#### Modifications etc. (not altering text)

- C18** S. 82 modified (1.7.1999) by S.I. 1999/672, art. 5, Sch. 2
- C19** S. 82 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), Sch. 3 Pt. I para.9 (with s. 46).

#### 83 Water quality objectives.

- (1) For the purpose of maintaining and improving the quality of controlled waters the Secretary of State may, by serving a notice on the [<sup>F124</sup>Agency] specifying—
  - (a) one or more of the classifications for the time being prescribed under section 82 above; and
  - (b) in relation to each specified classification, a date,

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establish the water quality objectives for any waters which are, or are included in, waters of a description prescribed for the purposes of that section.

- (2) The water quality objectives for any waters to which a notice under this section relates shall be the satisfaction by those waters, on and at all times after each date specified in the notice, of the requirements which at the time of the notice were the requirements for the classification in relation to which that date is so specified.
- (3) Where the Secretary of State has established water quality objectives under this section for any waters he may review objectives for those waters if—
- (a) five years or more have elapsed since the service of the last notice under subsection (1) or (6) of this section to be served in respect of those waters; or
  - (b) the [<sup>F124</sup>Agency], after consultation with such water undertakers and other persons as it considers appropriate, requests a review;

and the Secretary of State shall not exercise his power to establish objectives for any waters by varying the existing objectives for those waters except in consequence of such a review.

- (4) Where the Secretary of State proposes to exercise his power under this section to establish or vary the objectives for any waters he shall—
- (a) give notice setting out his proposal and specifying the period (not being less than three months from the date of publication of the notice) within which representations or objections with respect to the proposal may be made; and
  - (b) consider any representations or objections which are duly made and not withdrawn;

and, if he decides, after considering any such representations or objections, to exercise his power to establish or vary those objectives, he may do so either in accordance with the proposal contained in the notice or in accordance with that proposal as modified in such manner as he considers appropriate.

- (5) A notice under subsection (4) above shall be given—
- (a) by publishing the notice in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by it; and
  - (b) by serving a copy of the notice on the [<sup>F124</sup>Agency].
- (6) If, on a review under this section or in consequence of any representations or objections made following such a review for the purposes of subsection (4) above, the Secretary of State decides that the water quality objectives for any waters should remain unchanged, he shall serve notice of that decision on the [<sup>F124</sup>Agency].

#### Textual Amendments

**F124** Words in s. 83 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### Modifications etc. (not altering text)

**C20** S. 83 amended (20.3.1992) by S.I. 1992/337, **reg. 4**

**C21** S. 83 applied (with modifications) (6.1.1997) by S.I. 1996/3001, **reg. 7(1)**

S. 83 applied (with modifications) (26.11.1997) by S.I. 1997/2560, **reg. 5**

**C22** S. 83 modified (12.6.1997) by S.I. 1997/1331, **reg. 6(1)**

S. 83 modified (12.6.1997) by S.I. 1997/1332, **reg. 6(1)**

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S. 83 modified (25.3.1998) by S.I. 1998/389, reg. 5

## 84 General duties to achieve and maintain objectives etc.

- (1) It shall be the duty of the Secretary of State and of the [<sup>F125</sup>Agency] to exercise the powers conferred on him or it by or under the water pollution provisions of this Act (other than the preceding provisions of this Chapter and sections 104 and 192 below) in such manner as ensures, so far as it is practicable by the exercise of those powers to do so, that the water quality objectives specified for any waters in—
  - (a) a notice under section 83 above; or
  - (b) a notice under section 30C of the <sup>M22</sup>Control of Pollution Act 1974 (which makes corresponding provision for Scotland),
 are achieved at all times.
- (2) It shall be the duty of the [<sup>F125</sup>Agency], for the purposes of the carrying out of its functions under the water pollution provisions of this Act—
  - (a) to monitor the extent of pollution in controlled waters; and
  - (b) to consult, in such cases as it may consider appropriate, with [<sup>F126</sup>the Scottish Environment Protection Agency].

### Textual Amendments

**F125** Words in s. 84 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

**F126** Words in s. 84(2)(b) substituted (S.) (1.4.1996) by S.I. 1996/973, reg. 2, **Sch. para. 11**

### Modifications etc. (not altering text)

**C23** S. 84 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).

### Marginal Citations

**M22** 1974 c. 40.

## CHAPTER II

### POLLUTION OFFENCES

### Modifications etc. (not altering text)

**C24** Pt. III Chapter II (ss. 85-91) amended (1.5.1994) by S.I. 1994/1056, regs. 1(3), 19, **Sch. 4 Pt. I para. 11**

### *Principal offences*

## 85 Offences of polluting controlled waters.

- (1) A person contravenes this section if he causes or knowingly permits any poisonous, noxious or polluting matter or any solid waste matter to enter any controlled waters.

*Status: Point in time view as at 01/04/2005.*

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- (2) A person contravenes this section if he causes or knowingly permits any matter, other than trade effluent or sewage effluent, to enter controlled waters by being discharged from a drain or sewer in contravention of a prohibition imposed under section 86 below.
- (3) A person contravenes this section if he causes or knowingly permits any trade effluent or sewage effluent to be discharged—
  - (a) into any controlled waters; or
  - (b) from land in England and Wales, through a pipe, into the sea outside the seaward limits of controlled waters.
- (4) A person contravenes this section if he causes or knowingly permits any trade effluent or sewage effluent to be discharged, in contravention of any prohibition imposed under section 86 below, from a building or from any fixed plant—
  - (a) on to or into any land; or
  - (b) into any waters of a lake or pond which are not inland freshwaters.
- (5) A person contravenes this section if he causes or knowingly permits any matter whatever to enter any inland freshwaters so as to tend (either directly or in combination with other matter which he or another person causes or permits to enter those waters) to impede the proper flow of the waters in a manner leading, or likely to lead, to a substantial aggravation of—
  - (a) pollution due to other causes; or
  - (b) the consequences of such pollution.
- (6) Subject to the following provisions of this Chapter, a person who contravenes this section or the conditions of any consent given under this Chapter for the purposes of this section shall be guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000 or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

#### **Modifications etc. (not altering text)**

- C25** S. 85 restricted (13.4.2001) by [S.I. 2001/1478](#), [reg. 3\(c\)](#)
- C26** S. 85 applied by [London Docklands Railway Act 1991](#) (c. xxiii), [s. 7\(2\)\(a\)](#)
- C27** S. 85 applied (with modifications) (16.3.1992) by [Avon Weir Act 1992](#) (c. v), [s. 18\(6\)](#) (with s. 61)
- C28** S. 85 applied (with modifications) (13.2.1992) by [British Railways Act 1992](#) (c. i), [s. 18\(3\)\(a\)](#)
- C29** S. 85 applied (with modifications) (16.3.1992) by [London Underground Act 1992](#) (c.iii), [s. 12\(2\)\(a\)](#)
- C30** S. 85 applied (with modifications) (16.3.1992) by [Aire and Calder Navigation Act 1992](#) (c. iv), [s. 18\(4\)\(a\)](#)
- C31** S. 85 applied (with modifications) (18.6.1992) by [British Railways \(No. 2\) Act 1992](#) (c. xi), [s. 22\(4\)\(a\)](#)
- C32** S. 85 amended (27.8.1993) by [1993 c. 12](#), [ss. 40, 51\(2\)](#), [Sch. 3 Pt. I para.9](#) (with s. 46).
- C33** S. 85 applied (with modifications) (29.3.1993) by [1993 c. iv](#), [s. 23\(4\)\(a\)](#) (with [ss. 36, 41\(5\), 44\(1\)](#)).
- C34** S. 85 applied (with modifications) (27.5.1993) by [1993 c. vii](#), [s. 11\(2\)\(a\)](#) (with [ss. 19\(2\), 29\(1\)](#)).
- C35** S. 85 applied (with modifications) (1.7.1993) by [1993 c. ix](#), [s. 9\(2\)\(a\)](#) (with [ss. 15\(2\), 24\(1\)](#)).
- C36** S. 85 applied (with modifications) (27.7.1993) by [1993 c. xv](#), [s. 22\(3\)\(a\)](#) (with s. 44(1)).
- S. 85 applied (with modifications) (31.3.1994) by [1994 c. iv](#), [s. 13\(4\)\(a\)](#)
- S. 85 applied (with modifications) (5.7.1994) by [1994 c. ix](#), [s. 8\(2\)\(a\)](#)
- S. 85 applied (with modifications) (21.7.1994) by [1994 c. xi](#), [s. 24\(3\)\(a\)](#)
- S. 85 applied (with modifications) (21.7.1994) by [1994 c. xv](#), [s. 23\(3\)\(a\)](#)

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- S. 85 applied (with modifications) (7.3.1995) by S.I. 1995/519, **art. 16(5)**  
 S. 85 applied (with modifications) (28.7.1998) by 1998 c. iv, **s. 22(4)(a)**  
**C37** S. 85 modified (5.11.1993) by 1993 c.42, ss. 2, 19, Sch. 2 para. 10(8), Sch. 6 paras. 5, 8 (with s. 30(1), Sch. 2 para. 9).

## **86 Prohibition of certain discharges by notice or regulations.**

- (1) For the purposes of section 85 above a discharge of any effluent or other matter is, in relation to any person, in contravention of a prohibition imposed under this section if, subject to the following provisions of this section—
  - (a) the [<sup>F127</sup>Agency] has given that person notice prohibiting him from making or, as the case may be, continuing the discharge; or
  - (b) the [<sup>F127</sup>Agency] has given that person notice prohibiting him from making or, as the case may be, continuing the discharge unless specified conditions are observed, and those conditions are not observed.
- (2) For the purposes of section 85 above a discharge of any effluent or other matter is also in contravention of a prohibition imposed under this section if the effluent or matter discharged—
  - (a) contains a prescribed substance or a prescribed concentration of such a substance; or
  - (b) derives from a prescribed process or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts.
- (3) Nothing in subsection (1) above shall authorise the giving of a notice for the purposes of that subsection in respect of discharges from a vessel; and nothing in any regulations made by virtue of subsection (2) above shall require any discharge from a vessel to be treated as a discharge in contravention of a prohibition imposed under this section.
- (4) A notice given for the purposes of subsection (1) above shall expire at such time as may be specified in the notice.
- (5) The time specified for the purposes of subsection (4) above shall not be before the end of the period of three months beginning with the day on which the notice is given, except in a case where the [<sup>F127</sup>Agency] is satisfied that there is an emergency which requires the prohibition in question to come into force at such time before the end of that period as may be so specified.
- (6) Where, in the case of such a notice for the purposes of subsection (1) above as (but for this subsection) would expire at a time at or after the end of the said period of three months, an application is made before that time for a consent under this Chapter in respect of the discharge to which the notice relates, that notice shall be deemed not to expire until the result of the application becomes final—
  - (a) on the grant or withdrawal of the application;
  - (b) on the expiration, without the bringing of an appeal with respect to the decision on the application, of any period prescribed as the period within which any such appeal must be brought; or
  - (c) on the withdrawal or determination of any such appeal.

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### Textual Amendments

**F127** Words in s. 86 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

### Modifications etc. (not altering text)

**C38** S. 86 applied (with modifications) (16.3.1992) by **Avon Weir Act 1992 (c. v)**, **s. 18(6)** (with s. 61)

S. 86 applied (with modifications) (7.3.1995) by S.I. 1995/519, **art. 16(5)**

**C39** S. 86 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).

## 87 Discharges into and from public sewers etc.

[<sup>F128</sup>(1) This section applies for the purpose of determining liability where sewage effluent is discharged as mentioned in subsection (3) or (4) of section 85 above from any sewer or works (“the discharging sewer”) vested in a sewerage undertaker (“the discharging undertaker”).

(1A) If the discharging undertaker did not cause, or knowingly permit, the discharge it shall nevertheless be deemed to have caused the discharge if—

- (a) matter included in the discharge was received by it into the discharging sewer or any other sewer or works vested in it;
- (b) it was bound (either unconditionally or subject to conditions which were observed) to receive that matter into that sewer or works; and
- (c) subsection (1B) below does not apply.

(1B) This subsection applies where the sewage effluent was, before being discharged from the discharging sewer, discharged through a main connection into that sewer or into any other sewer or works vested in the discharging undertaker by another sewerage undertaker (“the sending undertaker”) under an agreement having effect between the discharging undertaker and the sending undertaker under section 110A of the Water Industry Act 1991.

(1C) Where subsection (1B) above applies, the sending undertaker shall be deemed to have caused the discharge if, although it did not cause, or knowingly permit, the sewage effluent to be discharged into the discharging sewer, or into any other sewer or works of the discharging undertaker—

- (a) matter included in the discharge was received by it into a sewer or works vested in it; and
- (b) it was bound (either unconditionally or subject to conditions which were observed) to receive that matter into that sewer or works.]

(2) A sewerage undertaker shall not be guilty of an offence under section 85 above by reason only of the fact that a discharge from a sewer or works vested in the undertaker contravenes conditions of a consent relating to the discharge if—

- (a) the contravention is attributable to a discharge which another person caused or permitted to be made into the sewer or works;
- (b) the undertaker either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions which were not observed; and
- (c) the undertaker could not reasonably have been expected to prevent the discharge into the sewer or works.

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- (3) A person shall not be guilty of an offence under section 85 above in respect of a discharge which he caused or permitted to be made into a sewer or works vested in a sewerage undertaker if the undertaker was bound to receive the discharge there either unconditionally or subject to conditions which were observed.
- [<sup>F129</sup>(4) In this section “main connection” has the same meaning as in section 110A of the Water Industry Act 1991.]

#### Textual Amendments

**F128** S. 87(1)(1A)(1B)(1C) substituted (1.7.1992) for s. 87(1) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 46(1)(3); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, dated 29th May 1992

**F129** S. 87(4) inserted (1.7.1992) by [Competition and Service \(Utilities\) Act 1992 \(c. 43\)](#), s. 46(2)(3); Competition and Service (Utilities) Act 1992 (Commencement No. 1) Order 1992, dated 29 May 1992

#### Modifications etc. (not altering text)

**C40** S. 87 applied (with modifications) (16.3.1992) by [Avon Weir Act 1992 \(c. v\)](#), s. 18(6) (with s. 61)

S. 87 applied (with modifications) (7.3.1995) by [S.I. 1995/519](#), art. 16(5)

**C41** S. 87(1) amended (27.8.1993) by [1993 c. 12](#), ss. 40, 51(2), [Sch. 3 Pt. I para.9](#) (with s. 46).

## 88 Defence to principal offences in respect of authorised discharges.

- (1) Subject to the following provisions of this section, a person shall not be guilty of an offence under section 85 above in respect of the entry of any matter into any waters or any discharge if the entry occurs or the discharge is made under and in accordance with, or as a result of any act or omission under and in accordance with—
- (a) a consent given under this Chapter or under Part II of the <sup>M23</sup>Control of Pollution Act 1974 (which makes corresponding provision for Scotland);
  - [<sup>F130</sup>(aa) a permit granted, under regulations under section 2 of the Pollution Prevention and Control Act 1999, by an authority exercising functions under the regulations that are exercisable for the purpose of preventing or reducing emissions in to the air, water and land;]
  - (b) an authorisation for a prescribed process designated for central control granted under Part I of the <sup>M24</sup>Environmental Protection Act 1990;
  - (c) a waste management or disposal licence;
  - (d) a licence granted under Part II of the <sup>M25</sup>Food and Environment Protection Act 1985;
  - (e) section 163 below or section 165 of the <sup>M26</sup>Water Industry Act 1991 (discharges for works purposes);
  - (f) any local statutory provision or statutory order which expressly confers power to discharge effluent into water; or
  - (g) any prescribed enactment.
- (2) Schedule 10 to this Act shall have effect, subject to section 91 below, with respect to the making of applications for consents under this Chapter for the purposes of subsection (1)(a) above and with respect to the giving, revocation and modification of such consents.
- (3) Nothing in any disposal licence shall be treated for the purposes of subsection (1) above as authorising—

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- (a) any such entry or discharge as is mentioned in subsections (2) to (4) of section 85 above; or
  - (b) any act or omission so far as it results in any such entry or discharge.
- (4) In this section—
- “disposal licence” means a licence issued in pursuance of section 5 of the Control of Pollution Act 1974;
  - “statutory order” means—
    - (a) any order under section 168 below or section 167 of the Water Industry Act 1991 (compulsory works orders); or
    - (b) any order, byelaw, scheme or award made under any other enactment, including an order or scheme confirmed by Parliament or brought into operation in accordance with special parliamentary procedure;
  - and
  - “waste management licence” means such a licence granted under Part II of the <sup>M27</sup>Environmental Protection Act 1990.

#### Textual Amendments

**F130** S. 88(1)(aa) inserted (1.8.2000) by S.I. 2000/1973, reg. 39, Sch. 10 para. 9

#### Modifications etc. (not altering text)

- C42** S. 88 excluded (5.11.1993) by 1993 c. 42, ss. 2, 19, Sch. 2 para. 10(8), Sch. 6 paras. 5, 8 (with s. 30(1), Sch. 2 para. 9).
- C43** S. 88(1) applied (with modifications) (1.4.1999) by S.I. 1998/2746, reg. 14(2)
- C44** S. 88(2) amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), Sch. 3 Pt. I para. 9 (with s. 46).

#### Marginal Citations

- M23** 1974 c. 40.
- M24** 1990 c. 43.
- M25** 1985 c. 48.55.
- M26** 1991 c. 56.
- M27** 1990 c. 43.

## 89 Other defences to principal offences.

- (1) A person shall not be guilty of an offence under section 85 above in respect of the entry of any matter into any waters or any discharge if—
  - (a) the entry is caused or permitted, or the discharge is made, in an emergency in order to avoid danger to life or health;
  - (b) that person takes all such steps as are reasonably practicable in the circumstances for minimising the extent of the entry or discharge and of its polluting effects; and
  - (c) particulars of the entry or discharge are furnished to the [<sup>F131</sup>Agency] as soon as reasonably practicable after the entry occurs.
- (2) A person shall not be guilty of an offence under section 85 above by reason of his causing or permitting any discharge of trade or sewage effluent from a vessel.

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- (3) A person shall not be guilty of an offence under section 85 above by reason only of his permitting water from an abandoned mine [<sup>F132</sup>or an abandoned part of a mine]to enter controlled waters.
- [<sup>F133</sup>(3A) Subsection (3) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.
- (3B) In determining for the purposes of subsection (3A) above whether a mine or part of a mine became abandoned before, on or after 31st December 1999 in a case where the mine or part has become abandoned on two or more occasions, of which—
- (a) at least one falls on or before that date, and
  - (b) at least one falls after that date,
- the mine or part shall be regarded as becoming abandoned after that date (but without prejudice to the operation of subsection (3) above in relation to that mine or part at, or in relation to, any time before the first of those occasions which falls after that date).
- (3C) Where, immediately before a part of a mine becomes abandoned, that part is the only part of the mine not falling to be regarded as abandoned for the time being, the abandonment of that part shall not be regarded for the purposes of subsection (3A) or (3B) above as constituting the abandonment of the mine, but only of that part of it.]
- (4) A person shall not, otherwise than in respect of the entry of any poisonous, noxious or polluting matter into any controlled waters, be guilty of an offence under section 85 above by reason of his depositing the solid refuse of a mine or quarry on any land so that it falls or is carried into inland freshwaters if—
- (a) he deposits the refuse on the land with the consent of the [<sup>F131</sup>Agency];
  - (b) no other site for the deposit is reasonably practicable; and
  - (c) he takes all reasonably practicable steps to prevent the refuse from entering those inland freshwaters.
- (5) A highway authority or other person entitled to keep open a drain by virtue of section 100 of the <sup>M28</sup>Highways Act 1980 shall not be guilty of an offence under section 85 above by reason of his causing or permitting any discharge to be made from a drain kept open by virtue of that section unless the discharge is made in contravention of a prohibition imposed under section 86 above.
- (6) In this section “mine” and “quarry” have the same meanings as in the <sup>M29</sup>Mines and Quarries Act 1954.

#### Textual Amendments

- F131** Words in s. 89 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F132** Words in s. 89(3) inserted (subject to other provisions of the amending Act) (1.7.1998) by 1995 c. 25, s. 60(1) (with ss. 7(6), 115, 117); S.I. 1998/604, **art. 3**
- F133** S. 89(3A)-(3C) inserted (subject to other provisions of the amending Act) (1.7.1998) by 1995 c. 25, s. 60(2) (with ss. 7(6), 115, 117); S.I. 1998/604, **art. 3**

#### Marginal Citations

- M28** 1980 c. 66.  
**M29** 1954 c. 70.

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*Offences in connection with deposits and vegetation in rivers*

**90 Offences in connection with deposits and vegetation in rivers.**

- (1) A person shall be guilty of an offence under this section if, without the consent of the <sup>F134</sup>Agency], he—
  - (a) removes from any part of the bottom, channel or bed of any inland freshwaters a deposit accumulated by reason of any dam, weir or sluice holding back the waters; and
  - (b) does so by causing the deposit to be carried away in suspension in the waters.
- (2) A person shall be guilty of an offence under this section if, without the consent of the <sup>F134</sup>Agency], he—
  - (a) causes or permits a substantial amount of vegetation to be cut or uprooted in any inland freshwaters, or to be cut or uprooted so near to any such waters that it falls into them; and
  - (b) fails to take all reasonable steps to remove the vegetation from those waters.
- (3) A person guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.
- (4) Nothing in subsection (1) above applies to anything done in the exercise of any power conferred by or under any enactment relating to land drainage, flood prevention or navigation.
- (5) In giving a consent for the purposes of this section the <sup>F134</sup>Agency] may make the consent subject to such conditions as it considers appropriate.
- (6) The Secretary of State may by regulations provide that any reference to inland freshwaters in subsection (1) or (2) above shall be construed as including a reference to such coastal waters as may be prescribed.

**Textual Amendments**

**F134** Words in s. 90 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 128 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3 (with art. 4)

*<sup>F135</sup> Consents for the purposes of sections 88 to 90*

**Textual Amendments**

**F135** Ss. 90A, 90B and preceding cross-heading inserted (subject to other provisions of the amending Act) (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), Sch. 22 para. 142 (with ss. 7(6), 115, 117); S.I. 1996/2909, arts. 2, 3 (with art. 4)

<sup>F136</sup>**90A Applications for consent under section 89 or 90.**

- (1) Any application for a consent for the purposes of section 89(4)(a) or 90(1) or (2) above—
  - (a) must be made on a form provided for the purpose by the Agency, and

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- (b) must be advertised in such manner as may be required by regulations made by the Secretary of State,  
 except that paragraph (b) above shall not have effect in the case of an application of any class or description specified in the regulations as being exempt from the requirements of that paragraph.
- (2) The applicant for such a consent must, at the time when he makes his application, provide the Agency—
  - (a) with all such information as it reasonably requires; and
  - (b) with all such information as may be prescribed for the purpose by the Secretary of State.
- (3) The information required by subsection (2) above must be provided either on, or together with, the form mentioned in subsection (1) above.
- (4) The Agency may give the applicant notice requiring him to provide it with all such further information of any description specified in the notice as it may require for the purpose of determining the application.
- (5) If the applicant fails to provide the Agency with any information required under subsection (4) above, the Agency may refuse to proceed with the application or refuse to proceed with it until the information is provided.

#### Textual Amendments

**F136** Ss. 90A, 90B and preceding cross-heading inserted (subject to other provisions of the amending Act) (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 142** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)

#### <sup>F137</sup>**90B Enforcement notices.**

- (1) If the Agency is of the opinion that the holder of a relevant consent is contravening any condition of the consent, or is likely to contravene any such condition, the Agency may serve on him a notice (an “enforcement notice”).
- (2) An enforcement notice shall—
  - (a) state that the Agency is of the said opinion;
  - (b) specify the matters constituting the contravention or the matters making it likely that the contravention will arise;
  - (c) specify the steps that must be taken to remedy the contravention or, as the case may be, to remedy the matters making it likely that the contravention will arise; and
  - (d) specify the period within which those steps must be taken.
- (3) Any person who fails to comply with any requirement imposed by an enforcement notice shall be guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000 or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

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- (4) If the Agency is of the opinion that proceedings for an offence under subsection (3) above would afford an ineffectual remedy against a person who has failed to comply with the requirements of an enforcement notice, the Agency may take proceedings in the High Court for the purpose of securing compliance with the notice.
- (5) The Secretary of State may, if he thinks fit in relation to any person, give to the Agency directions as to whether the Agency should exercise its powers under this section and as to the steps which must be taken.
- (6) In this section—
  - “relevant consent” means—
    - (a) a consent for the purposes of section 89(4)(a) or 90(1) or (2) above; or
    - (b) a discharge consent, within the meaning of section 91 below; and
  - “the holder”, in relation to a relevant consent, is the person who has the consent in question.]

#### Textual Amendments

**F137** Ss. 90A, 90B and preceding cross-heading inserted (subject to other provisions of the amending Act) (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), Sch. 22 para. 142 (with ss. 7(6), 115, 117); S.I. 1996/2909, arts. 2, 3 (with art. 4)

### *Appeals in respect of consents under Chapter II*

## 91 Appeals in respect of consents under Chapter II.

- (1) This section applies where the [<sup>F138</sup>Agency], otherwise than in pursuance of a direction of the Secretary of State—
  - (a) on an application for a consent under this Chapter for the purposes of section 88(1)(a) above, has refused a consent for any discharges;
  - (b) in giving a discharge consent, has made that consent subject to conditions;
  - (c) has revoked a discharge consent, modified the conditions of any such consent or provided that any such consent which was unconditional shall be subject to conditions;
  - (d) has, for the purposes of paragraph [<sup>F139</sup>8(1)] or (2) of Schedule 10 to this Act, specified a period in relation to a discharge consent without the agreement of the person who proposes to make, or makes, discharges in pursuance of that consent;
  - (e) has refused a consent for the purposes of section 89(4)(a) above for any deposit; <sup>F140</sup> . . .
  - (f) he refused a consent for the purposes of section 90 above for the doing of anything by any person or, in giving any such consent, made that consent subject to conditions;
  - [<sup>F141</sup>(g) has refused a person a variation of any such consent as is mentioned in paragraphs (a) to (f) above or, in allowing any such variation, has made the consent subject to conditions; or
  - (h) has served an enforcement notice on any person.]
- (2) The person, if any, who applied for the consent [<sup>F142</sup>or variation] in question, or any person whose deposits, discharges or other conduct is or would be authorised by the

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consent [<sup>F143</sup>, or the person on whom the enforcement notice was served,] may appeal against the decision to the Secretary of State.

[<sup>F144</sup>(2A) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).

(2B) An appeal under this section shall, if and to the extent required by regulations under subsection (2K) below, be advertised in such manner as may be prescribed by regulations under that subsection.

(2C) If either party to the appeal so requests or the Secretary of State so decides, an appeal shall be or continue in the form of a hearing (which may, if the person hearing the appeal so decides, be held, or held to any extent, in private).

(2D) On determining an appeal brought by virtue of any of paragraphs (a) to (g) of subsection (1) above against a decision of the Agency, the Secretary of State—

- (a) may affirm the decision;
- (b) where the decision was a refusal to grant a consent or a variation of a consent, may direct the Agency to grant the consent or to vary the consent, as the case may be;
- (c) where the decision was as to the conditions of a consent, may quash all or any of those conditions;
- (d) where the decision was to revoke a consent, may quash the decision;
- (e) where the decision relates to a period specified for the purposes of paragraph 8(1) or (2) of Schedule 10 to this Act, may modify any provisions specifying that period;

and where he exercises any of the powers in paragraphs (b), (c) or (d) above, he may give directions as to the conditions to which the consent is to be subject.

(2E) On the determination of an appeal brought by virtue of paragraph (h) of subsection (1) above, the Secretary of State may either quash or affirm the enforcement notice and, if he affirms it, may do so either in its original form or with such modifications as he may in the circumstances think fit.

(2F) Subject to subsection (2G) below, where an appeal is brought by virtue of subsection (1)(c) above against a decision—

- (a) to revoke a discharge consent,
- (b) to modify the conditions of any such consent, or
- (c) to provide that any such consent which was unconditional shall be subject to conditions,

the revocation, modification or provision shall not take effect pending the final determination or the withdrawal of the appeal.

(2G) Subsection (2F) above shall not apply to a decision in the case of which the notice effecting the revocation, modification or provision in question includes a statement that in the opinion of the Agency 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.

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- (2H) Where the decision under appeal is one falling within subsection (2G) above, if, on the application of the holder or former holder of the consent, the Secretary of State or other person determining the appeal determines that the Agency acted unreasonably in excluding the application of subsection (2F) above, then—
- (a) if the appeal is still pending at the end of the day on which the determination is made, subsection (2F) above shall apply to the decision from the end of that day; and
  - (b) the holder or former holder of the consent shall be entitled to recover compensation from the Agency 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 arbitration.
- (2J) Where an appeal is brought under this section against an enforcement notice, the bringing of the appeal shall not have the effect of suspending the operation of the notice.
- (2K) Provision may be made by the Secretary of State by regulations with respect to appeals under this section and in particular—
- (a) as to the period within which and the manner in which appeals are to be brought; and
  - (b) as to the manner in which appeals are to be considered.]
- (8) In this section “discharge consent” means such a consent under this Chapter for any discharges or description of discharges as is given for the purposes of section 88(1) (a) above either on an application for a consent or, by virtue of paragraph [F1456] of Schedule 10 to this Act, without such an application having been made.

#### Textual Amendments

- F138** Words in s. 91 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F139** Words in s. 91(1)(d) substituted (subject to other provisions of the amending Act) (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 143(1)(a)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)
- F140** Word in s. 91(1) repealed (1.4.1997) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2560, **art. 2**
- F141** S. 91(1)(g)(h) added (subject to other provisions of the amending Act) (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 143(1)(b)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)
- F142** Words in s. 91(2) inserted (subject to other provisions of the amending Act) (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 143(2)(a)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)
- F143** Words in s. 91(2) inserted (subject to other provisions of the amending Act) (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 143(2)(b)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)
- F144** S. 91(2A)-(2K) substituted for s. 91(3)-(7) (subject to other provisions of the amending Act) (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 143(3)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)
- F145** Word in s. 91(8) substituted (subject to other provisions of the amending Act) (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 143(4)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (with art. 4)

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#### Modifications etc. (not altering text)

**C45** S. 91: power to delegate functions conferred (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 114(2)(a)(v) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

## [<sup>F146</sup>CHAPTER IIA

### ABANDONED MINES

#### Textual Amendments

**F146** Chapter IIA (ss. 91A-91B) inserted (subject to other provisions of the amending Act) (21.9.1995 for certain purposes and 1.7.1998 otherwise) by 1995 c. 25, s. 58 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3 (with art. 4); S.I. 1998/604, art. 3

#### <sup>F147</sup>91A Introductory.

- (1) For the purposes of this Chapter, “abandonment”, in relation to a mine,—
  - (a) subject to paragraph (b) below, includes—
    - (i) the discontinuance of any or all of the operations for the removal of water from the mine;
    - (ii) the cessation of working of any relevant seam, vein or vein-system;
    - (iii) the cessation of use of any shaft or outlet of the mine;
    - (iv) in the case of a mine in which activities other than mining activities are carried on (whether or not mining activities are also carried on in the mine)—
      - (A) the discontinuance of some or all of those other activities in the mine; and
      - (B) any substantial change in the operations for the removal of water from the mine; but
  - (b) does not include—
    - (i) any disclaimer under section 178 or 315 of the <sup>M30</sup>Insolvency Act 1986 (power of liquidator, or trustee of a bankrupt’s estate, to disclaim onerous property) by the official receiver acting in a compulsory capacity; or
    - (ii) the abandonment of any rights, interests or liabilities by the Accountant in Bankruptcy acting as permanent or interim trustee in a sequestration (within the meaning of the <sup>M31</sup>Bankruptcy (Scotland) Act 1985);

and cognate expressions shall be construed accordingly.
- (2) In this Chapter, except where the context otherwise requires—
  - “the 1954 Act” means the <sup>M32</sup>Mines and Quarries Act 1954;
  - “acting in a compulsory capacity”, in the case of the official receiver, means acting as—
    - (a) liquidator of a company;
    - (b) receiver or manager of a bankrupt’s estate, pursuant to section 287 of the <sup>M33</sup>Insolvency Act 1986;

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- (c) trustee of a bankrupt's estate;
- (d) liquidator of an insolvent partnership;
- (e) trustee of an insolvent partnership;
- (f) trustee, or receiver or manager, of the insolvent estate of a deceased person;
- “mine” has the same meaning as in the 1954 Act;
- “the official receiver” has the same meaning as it has in the <sup>M34</sup>Insolvency Act 1986 by virtue of section 399(1) of that Act;
- “prescribed” means prescribed in regulations;
- “regulations” means regulations made by the Secretary of State;
- “relevant seam, vein or vein-system”, in the case of any mine, means any seam, vein or vein-system for the purpose of, or in connection with, whose working any excavation constituting or comprised in the mine was made.

#### Textual Amendments

**F147** Chapter IIA (ss. 91A-91B) inserted (subject to other provisions of the amending Act) (21.9.1995 for certain purposes and 1.7.1998 otherwise) by 1995 c. 25, s. 58 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3 (with art. 4); S.I. 1998/604, art. 3

#### Marginal Citations

- M30** 1986 c. 45.
- M31** 1985 c. 66.
- M32** 1954 c. 70.
- M33** 1986 c. 45.
- M34** 1986 c. 45.

#### <sup>F148</sup>**91B Mine operators to give the Agency six months' notice of any proposed abandonment.**

- (1) If, in the case of any mine, there is to be an abandonment at any time after the expiration of the initial period, it shall be the duty of the operator of the mine to give notice of the proposed abandonment to the Agency at least six months before the abandonment takes effect.
- (2) A notice under subsection (1) above shall contain such information (if any) as is prescribed for the purpose, which may include information about the operator's opinion as to any consequences of the abandonment.
- (3) A person who fails to give the notice required by subsection (1) above shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (4) A person shall not be guilty of an offence under subsection (3) above if—
  - (a) the abandonment happens in an emergency in order to avoid danger to life or health; and
  - (b) notice of the abandonment, containing such information as may be prescribed, is given as soon as reasonably practicable after the abandonment has happened.

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- (5) Where the operator of a mine is—
- (a) the official receiver acting in a compulsory capacity, or
  - (b) the Accountant in Bankruptcy acting as permanent or interim trustee in a sequestration (within the meaning of the <sup>M35</sup>Bankruptcy (Scotland) Act 1985),
- he shall not be guilty of an offence under subsection (3) above by reason of any failure to give the notice required by subsection (1) above if, as soon as reasonably practicable (whether before or after the abandonment), he gives to the Agency notice of the abandonment or proposed abandonment, containing such information as may be prescribed.
- (6) Where a person gives notice under subsection (1), (4)(b) or (5) above, he shall publish prescribed particulars of, or relating to, the notice in one or more local newspapers circulating in the locality where the mine is situated.
- (7) Where the Agency—
- (a) receives notice under this section or otherwise learns of an abandonment or proposed abandonment in the case of any mine, and
  - (b) considers that, in consequence of the abandonment or proposed abandonment taking effect, any land has or is likely to become contaminated land, within the meaning of Part IIA of the <sup>M36</sup>Environmental Protection Act 1990,
- it shall be the duty of the Agency to inform the local authority in whose area that land is situated of the abandonment or proposed abandonment.
- (8) In this section—
- “the initial period” means the period of six months beginning with the day on which subsection (1) above comes into force;
  - “local authority” means—
    - (a) any unitary authority;
    - (b) any district council, so far as it is not a unitary authority;
    - (c) the Common Council of the City of London and, as respects the Temples, the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple respectively;
  - “unitary authority” means—
    - (a) the council of a county, so far as it is the council of an area for which there are no district councils;
    - (b) the council of any district comprised in an area for which there is no county council;
    - (c) the council of a London borough;
    - (d) the council of a county borough in Wales.]

#### Textual Amendments

**F148** Chapter IIA (ss. 91A-91B) inserted (subject to other provisions of the amending Act) (21.9.1995 for certain purposes and 1.7.1998 otherwise) by 1995 c. 25, s. 58 (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3 (with art. 4); S.I. 1998/604, art. 3

#### Marginal Citations

**M35** 1985 c. 66.

**M36** 1990 c. 43.

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## CHAPTER III

### POWERS TO PREVENT AND CONTROL POLLUTION

#### 92 Requirements to take precautions against pollution.

- (1) The Secretary of State may by regulations make provision—
- (a) for prohibiting a person from having custody or control of any poisonous, noxious or polluting matter unless prescribed works and prescribed precautions and other steps have been carried out or taken for the purpose of preventing or controlling the entry of the matter into any controlled waters;
  - (b) for requiring a person who already has custody or control of, or makes use of, any such matter to carry out such works for that purpose and to take such precautions and other steps for that purpose as may be prescribed.
- (2) Without prejudice to the generality of the power conferred by subsection (1) above, regulations under that subsection may—
- (a) confer power on the [<sup>F149</sup>Agency]—
    - (i) to determine for the purposes of the regulations the circumstances in which a person is required to carry out works or to take any precautions or other steps; and
    - (ii) by notice to that person, to impose the requirement and to specify or describe the works, precautions or other steps which that person is required to carry out or take;
  - (b) provide for appeals to the Secretary of State against notices served by the [<sup>F149</sup>Agency] in pursuance of provision made by virtue of paragraph (a) above; and
  - (c) provide that a contravention of the regulations shall be an offence the maximum penalties for which shall not exceed the penalties specified in subsection (6) of section 85 above.

[<sup>F150</sup>(3) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).]

#### Textual Amendments

**F149** Words in s. 92 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

**F150** S. 92(3) added (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 144** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### Modifications etc. (not altering text)

**C46** S. 92 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).

**C47** S. 92: power to delegate functions conferred (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 114(2)(a)(v) (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### 93 Water protection zones.

- (1) Where the Secretary of State considers, after consultation (in the case of an area wholly or partly in England) with the Minister, that subsection (2) below is satisfied in relation to any area, he may by order make provision—

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- (a) designating that area as a water protection zone; and
  - (b) prohibiting or restricting the carrying on in the designated area of such activities as may be specified or described in the order.
- (2) For the purposes of subsection (1) above this subsection is satisfied in relation to any area if (subject to subsection (3) below) it is appropriate, with a view to preventing or controlling the entry of any poisonous, noxious or polluting matter into controlled waters, to prohibit or restrict the carrying on in that area of activities which the Secretary of State considers are likely to result in the pollution of any such waters.
- (3) The reference in subsection (2) above to the entry of poisonous, noxious or polluting matter into controlled waters shall not include a reference to the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use of any land for agricultural purposes
- (4) Without prejudice to the generality of the power conferred by virtue of subsection (1) above, an order under this section may—
- (a) confer power on the [<sup>F151</sup>Agency] to determine for the purposes of the order the circumstances in which the carrying on of any activities is prohibited or restricted and to determine the activities to which any such prohibition or restriction applies;
  - (b) apply a prohibition or restriction in respect of any activities to cases where the activities are carried on without the consent of the [<sup>F151</sup>Agency] or in contravention of any conditions subject to which any such consent is given;
  - (c) provide that a contravention of a prohibition or restriction contained in the order or of a condition of a consent given for the purposes of any such prohibition or restriction shall be an offence the maximum penalties for which shall not exceed the penalties specified in subsection (6) of section 85 above;
  - (d) provide (subject to any regulations under section 96 below) for anything falling to be determined under the order by the [<sup>F151</sup>Agency] to be determined in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be specified in the order;
  - (e) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (f) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate.
- (5) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; but the Secretary of State shall not make such an order except on an application made by the [<sup>F151</sup>Agency] in accordance with Schedule 11 to this Act and otherwise in accordance with that Schedule.

#### Textual Amendments

**F151** Words in s. 93 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### Modifications etc. (not altering text)

**C48** S. 93 extended (01.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(2), 4(2), **Sch. 2 Pt. 1 para. 4(3)**.

**C49** S. 93 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. 1 para. 9** (with s. 46).

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## 94 Nitrate sensitive areas.

- (1) Where the relevant Minister considers that it is appropriate to do so with a view to achieving the purpose specified in subsection (2) below in relation to any land, he may by order make provision designating that land, together with any other land to which he considers it appropriate to apply the designation, as a nitrate sensitive area.
- (2) The purpose mentioned in subsection (1) above is preventing or controlling the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use for agricultural purposes of any land.
- (3) Where it appears to the relevant Minister, in relation to any area which is or is to be designated by an order under this section as a nitrate sensitive area, that it is appropriate for provision for the imposition of requirements, prohibitions or restrictions to be contained in an order under this section (as well as for him to be able to enter into such agreements as are mentioned in section 95 below), he may, by a subsequent order under this section or, as the case may be, by the order designating that area—
  - (a) with a view to achieving the purpose specified in subsection (2) above, require, prohibit or restrict the carrying on, either on or in relation to any agricultural land in that area, of such activities as may be specified or described in the order; and
  - (b) provide for such amounts (if any) as may be specified in or determined under the order to be paid by one of the Ministers, to such persons as may be so specified or determined, in respect of the obligations imposed in relation to that area on those persons by virtue of paragraph (a) above.
- (4) Without prejudice to the generality of subsection (3) above, provision contained in an order under this section by virtue of that subsection may—
  - (a) confer power on either of the Ministers to determine for the purposes of the order the circumstances in which the carrying on of any activities is required, prohibited or restricted and to determine the activities to which any such requirement, prohibition or restriction applies;
  - (b) provide for any requirement to carry on any activity not to apply in cases where one of the Ministers has consented to a failure to carry on that activity and any conditions on which the consent has been given are complied with;
  - (c) apply a prohibition or restriction in respect of any activities to cases where the activities are carried on without the consent of one of the Ministers or in contravention of any conditions subject to which any such consent is given;
  - (d) provide that a contravention of a requirement, prohibition or restriction contained in the order or in a condition of a consent given in relation to or for the purposes of any such requirement, prohibition or restriction shall be an offence the maximum penalties for which shall not exceed the penalties specified in subsection (6) of section 85 above;
  - (e) provide for amounts paid in pursuance of any provision contained in the order to be repaid at such times and in such circumstances, and with such interest, as may be specified in or determined under the order; and
  - (f) provide (subject to any regulations under section 96 below) for anything falling to be determined under the order by any person to be determined in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be specified in the order.
- (5) An order under this section may—

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- (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the relevant Minister considers appropriate.
- (6) The power of the relevant Minister to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; but the relevant Minister shall not make such an order except in accordance with any applicable provisions of Schedule 12 to this Act.
- (7) In this section and in Schedule 12 to this Act “the relevant Minister”—
- (a) in relation to the making of an order in relation to an area which is wholly in England or which is partly in England and partly in Wales, means the Ministers; and
  - (b) in relation to the making of an order in relation to an area which is wholly in Wales, means the Secretary of State.

## **95 Agreements in nitrate sensitive areas.**

- (1) Where—
- (a) any area has been designated as a nitrate sensitive area by an order under section 94 above; and
  - (b) the relevant Minister considers that it is appropriate to do so with a view to achieving the purpose mentioned in subsection (2) of that section,
- he may, subject to such restrictions (if any) as may be set out in the order, enter into an agreement falling within subsection (2) below.
- (2) An agreement falls within this subsection if it is one under which, in consideration of payments to be made by the relevant Minister—
- (a) the owner of the freehold interest in any agricultural land in a nitrate sensitive area; or
  - (b) where the owner of the freehold interest in any such land has given his written consent to the agreement being entered into by any person having another interest in that land, that other person,
- accepts such obligations with respect to the management of that land or otherwise as may be imposed by the agreement.
- (3) An agreement such as is mentioned in subsection (2) above between the relevant Minister and a person having an interest in any land shall bind all persons deriving title from or under that person to the extent that the agreement is expressed to bind that land in relation to those persons.
- (4) In this section “the relevant Minister”—
- (a) in relation to an agreement with respect to land which is wholly in England, means the Minister;
  - (b) in relation to an agreement with respect to land which is wholly in Wales, means the Secretary of State; and
  - (c) in relation to an agreement with respect to land which is partly in England and partly in Wales, means either of the Ministers.

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## 96 Regulations with respect to consents required by virtue of section 93 or 94.

- (1) The Secretary of State may, for the purposes of any orders under section 93 above which require the consent of the [<sup>F152</sup>Agency] to the carrying on of any activities, by regulations make provision with respect to—
    - (a) applications for any such consent;
    - (b) the conditions of any such consent;
    - (c) the revocation or variation of any such consent;
    - (d) appeals against determinations on any such application;
    - (e) the exercise by the Secretary of State of any power conferred on the [<sup>F152</sup>Agency] by the orders;
    - (f) the imposition of charges where such an application has been made, such a consent has been given or anything has been done in pursuance of any such consent; and
    - (g) the registration of any such application or consent.
  - (2) The Ministers may, for the purposes of any orders under section 94 above which require the consent of either of those Ministers to the carrying on of any activities or to any failure to carry on any activity, by regulations make provision with respect to—
    - (a) applications for any such consent;
    - (b) the conditions of any such consent;
    - (c) the revocation or variation of any such consent;
    - (d) the reference to arbitration of disputes about determinations on any such application;
    - (e) the imposition of charges where such an application has been made, such a consent has been given or there has been any act or omission in pursuance of any such consent; and
    - (f) the registration of any such application or consent.
  - (3) Without prejudice to the generality of the powers conferred by the preceding provisions of this section, regulations under subsection (1) above may apply (with or without modifications) any enactment having effect in relation to consents under Chapter II of this Part.
- [<sup>F153</sup>(4) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).]

### Textual Amendments

**F152** Words in s. 96 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

**F153** S. 96(4) added (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 145** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

### Modifications etc. (not altering text)

**C50** S. 96: power to delegate functions conferred (1.4.1996) by 1995 c. 25, **s. 114(2)(a)(v)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

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## 97 Codes of good agricultural practice.

- (1) The Ministers may by order made by statutory instrument approve any code of practice issued (whether by either or both of the Ministers or by another person) for the purpose of—
  - (a) giving practical guidance to persons engaged in agriculture with respect to activities that may affect controlled waters; and
  - (b) promoting what appear to them to be desirable practices by such persons for avoiding or minimising the pollution of any such waters,
 and may at any time by such an order approve a modification of such a code or withdraw their approval of such a code or modification.
- (2) A contravention of a code of practice as for the time being approved under this section shall not of itself give rise to any criminal or civil liability, but the [<sup>F154</sup>Agency] shall take into account whether there has been or is likely to be any such contravention in determining when and how it should exercise—
  - (a) its power, by giving a notice under subsection (1) of section 86 above, to impose a prohibition under that section; and
  - (b) any powers conferred on the [<sup>F154</sup>Agency] by regulations under section 92 above.
- (3) The Ministers shall not make an order under this section unless they have first consulted the [<sup>F154</sup>Agency].

### Textual Amendments

**F154** Words in s. 97 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

## CHAPTER IV

### SUPPLEMENTAL PROVISIONS WITH RESPECT TO WATER POLLUTIONS

## 98 Radioactive substances.

- (1) Except as provided by regulations made by the Secretary of State under this section, nothing in this Part shall apply in relation to radioactive waste within the meaning of the [<sup>F155</sup>Radioactive Substances Act 1993].
- (2) The Secretary of State may by regulations—
  - (a) provide for prescribed provisions of this Part to have effect with such modifications as he considers appropriate for dealing with such waste;
  - (b) make such modifications of the said Act of [<sup>F156</sup>1993] or, in relation to such waste, of any other enactment as he considers appropriate in consequence of the provisions of this Part and of any regulations made by virtue of paragraph (a) above.

### Textual Amendments

**F155** Words in s. 98(1) substituted (27.8.1993) by 1993 c. 12, ss. 49(1), 51(2), **Sch. 4 para. 11(a)** (with s. 46).

*Status: Point in time view as at 01/04/2005.*

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**F156** Words in s. 98(2)(b) substituted (27.8.1993) by 1993 c. 12, ss. 49(1), 51(2), **Sch. 4 para. 11(b)** (with s. 46).

## 99 Consents required by the [<sup>F157</sup>Agency].

- (1) The Secretary of State may by regulations—
  - (a) make provision modifying the water pollution provisions of this Act in relation to cases in which consents under Chapter II of this Part are required by the [<sup>F157</sup>Agency]; and
  - (b) for the purposes of the application of the provisions of this Part in relation to discharges by the [<sup>F157</sup>Agency], make such other modifications of those provisions as may be prescribed.
- (2) Without prejudice to the generality of subsection (1) above, regulations under this section may provide for such consents as are mentioned in paragraph (a) of that subsection to be required to be given by the Secretary of State (instead of by the [<sup>F157</sup>Agency]) and, in prescribed cases, to be deemed to have been so given.

### Textual Amendments

**F157** Words in s. 99 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

### Modifications etc. (not altering text)

**C51** S. 99 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).

## 100 Civil liability in respect of pollution and savings.

Except in so far as this Part expressly otherwise provides and subject to the provisions of section 18 of the <sup>M37</sup>Interpretation Act 1978 (which relates to offences under two or more laws), nothing in this Part—

- (a) confers a right of action in any civil proceedings (other than proceedings for the recovery of a fine) in respect of any contravention of this Part or any subordinate legislation, consent or other instrument made, given or issued under this Part;
- (b) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this Part; or
- (c) affects any restriction imposed by or under any other enactment, whether public, local or private.

### Marginal Citations

**M37** 1978 c. 30.

## 101 Limitation for summary offences under Part III.

Notwithstanding anything in section 127 of the <sup>M38</sup>Magistrates' Courts Act 1980 (time limit for summary proceedings), a magistrates' court may try any summary offence

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under this Part, or under any subordinate legislation made under this Part, if the information is laid not more than twelve months after the commission of the offence.

#### Marginal Citations

M38 1980 c. 43.

### 102 Power to give effect to international obligations.

The Secretary of State shall have power by regulations to provide that the water pollution provisions of this Act shall have effect with such modifications as may be prescribed for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect—

- (a) to any Community obligations; or
- (b) to any international agreement to which the United Kingdom is for the time being a party.

### 103 Transitional pollution provisions.

The provisions of this Part shall have effect subject to the provisions of Schedule 13 to this Act (which reproduce transitional provision originally made in connection with the coming into force of provisions of the <sup>M39</sup>Water Act 1989).

#### Marginal Citations

M39 1989 c. 15.

### 104 Meaning of “controlled waters” etc. in Part III.

- (1) References in this Part to controlled waters are references to waters of any of the following classes—

- (a) relevant territorial waters, that is to say, subject to subsection (4) below, the waters which extend seaward for three miles from the baselines from which the breadth of the territorial sea adjacent to England and Wales is measured;
- (b) coastal waters, that is to say, any waters which are within the area which extends landward from those baselines as far as—
  - (a) the limit of the highest tide; or
  - (b) in the case of the waters of any relevant river or watercourse, the fresh-water limit of the river or watercourse,
 together with the waters of any enclosed dock which adjoins waters within that area;
- (c) inland freshwaters, that is to say, the waters of any relevant lake or pond or of so much of any relevant river or watercourse as is above the fresh-water limit;
- (d) ground waters, that is to say, any waters contained in underground strata;

and, accordingly, in this Part “coastal waters”, “controlled waters”, “ground waters”, “inland freshwaters” and “relevant territorial waters” have the meanings given by this subsection.

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- (2) In this Part any reference to the waters of any lake or pond or of any river or watercourse includes a reference to the bottom, channel or bed of any lake, pond, river or, as the case may be, watercourse which is for the time being dry.
- (3) In this section—
- “fresh-water limit”, in relation to any river or watercourse, means the place for the time being shown as the fresh-water limit of that river or watercourse in the latest map deposited for that river or watercourse under section 192 below;
- “miles” means international nautical miles of 1,852 metres;
- “lake or pond” includes a reservoir of any description;
- “relevant lake or pond” means (subject to subsection (4) below) any lake or pond which (whether it is natural or artificial or above or below ground) discharges into a relevant river or watercourse or into another lake or pond which is itself a relevant lake or pond;
- “relevant river or watercourse” means (subject to subsection (4) below) any river or watercourse (including an underground river or watercourse and an artificial river or watercourse) which is neither a public sewer nor a sewer or drain which drains into a public sewer.
- (4) The Secretary of State may by order provide—
- that any area of the territorial sea adjacent to England and Wales is to be treated as if it were an area of relevant territorial waters for the purposes of this Part and of any other enactment in which any expression is defined by reference to the meanings given by this section;
  - that any lake or pond which does not discharge into a relevant river or watercourse or into a relevant lake or pond is to be treated for those purposes as a relevant lake or pond;
  - that a lake or pond which does so discharge and is of a description specified in the order is to be treated for those purposes as if it were not a relevant lake or pond;
  - that a watercourse of a description so specified is to be treated for those purposes as if it were not a relevant river or watercourse.
- (5) An order under this section may—
- contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate; and
  - make different provision for different cases, including different provision in relation to different persons, circumstances or localities.
- (6) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

#### Modifications etc. (not altering text)

- C52** S. 104 definition of "controlled waters" applied by [London Docklands Railway Act 1991 \(c. xxiii\)](#), s. 7(2)(a)
- C53** S. 104(1) modified (12.6.1997) by [S.I. 1997/1331](#), [reg. 6\(2\)](#)  
S. 104(1) modified (12.6.1997) by [S.I. 1997/1332](#), [reg. 6\(2\)](#)
- C54** S. 104(1) modified (1.6.2003 for E.) by [Bathing Waters \(Classification\) \(England\) Regulations 2003 \(S.I. 2003/1238\)](#), [regs. 1, 2\(1\)](#)

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C55 S. 104(1)(c) applied (with modifications) (6.1.1997) by S.I. 1996/3001, reg. 7(2)

PART IV  
FLOOD DEFENCE

**Modifications etc. (not altering text)**  
C56 Pt. IV (ss. 105-113): functions transferred to the Environment Agency (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 2(1)(a)(iii) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3 (with art. 4)

General

105 General functions with respect to flood defence.

- <sup>F158</sup>(1) . . . . .
- (2) For the purpose of carrying out its flood defence functions the [<sup>F159</sup>Agency] shall from time to time carry out surveys of the areas in relation to which it carries out those functions.
- (3) In the exercise of the powers conferred by the following provisions of this Part and the other flood defence provisions of this Act due regard shall be had to the interests of fisheries, including sea fisheries.
- (4) Nothing in the following provisions of this Part or the other flood defence provisions of this Act shall prejudice or affect the provisions of Part V of this Act or the <sup>M40</sup>Salmon and Freshwater Fisheries Act 1975 or any right, power or duty conferred or imposed by that Part or that Act.

**Textual Amendments**  
F158 S. 105(1) repealed (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 146, Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3  
F159 Word in s. 105 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), Sch. 22 para. 128 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3 (with art. 4)

**Modifications etc. (not altering text)**  
C57 S. 105 excluded (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, ss. 19, 120(2), Sch. 5 Pt. II para. 13(2), Sch. 23 Pt. II para. 23 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

**Marginal Citations**  
M40 1975 c. 51.

106 Obligation to carry out flood defence functions through committees.

- (1) Without prejudice to any scheme for the appointment of local flood defence committees and subject to subsection (2) below, the [<sup>F160</sup>Agency] shall arrange for all its functions relating to flood defence under the following provisions of this Act and

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- the <sup>M41</sup>Land Drainage Act 1991 to be carried out by regional flood defence committees, so that those functions of the [<sup>F160</sup>Agency] are carried out—
- (a) in relation to the area of each regional flood defence committee, by the committee for that area; and
  - (b) in cases involving the areas of more than one regional flood defence committee, by such committee, or jointly by such committees, as may be determined in accordance with arrangements made by the [<sup>F160</sup>Agency].
- (2) The [<sup>F160</sup>Agency] shall not make arrangements for the carrying out by any other body, or by any committee, of any of its functions with respect to—
- (a) the issuing of levies (within the meaning of the <sup>M42</sup>Local Government Finance Act 1988); or
  - (b) the making of drainage charges under Chapter II of Part VI of this Act;
- and nothing in this section shall enable the [<sup>F160</sup>Agency] to authorise any such other body or any committee to borrow money for purposes connected with the [<sup>F160</sup>Agency's] functions relating to flood defence.
- (3) The [<sup>F160</sup>Agency] may give a regional flood defence committee a direction of a general or specific character as to the carrying out of any function relating to flood defence, other than one of its internal drainage functions, so far as the carrying out of that function appears to the [<sup>F160</sup>Agency] likely to affect materially the [<sup>F160</sup>Agency's] management of water for purposes other than flood defence.
- (4) It shall be the duty of a regional flood defence committee to comply with any direction under subsection (3) above.
- (5) In subsection (3) above “internal drainage functions” means the functions of the [<sup>F160</sup>Agency] under sections 108, 139 and 140 below and the following provisions of the <sup>M43</sup>Land Drainage Act 1991, that is to say—
- (a) sections 2 to 9 (transfer to the [<sup>F160</sup>Agency] and supervision by the [<sup>F160</sup>Agency] of the functions of internal drainage boards);
  - (b) sections 38, 39 and 47 (differential drainage rates and exemptions from such rates);
  - (c) sections 57 and 58(1) (provisions with respect to contributions by the [<sup>F160</sup>Agency] to the expenses of internal drainage boards and the expenses of the [<sup>F160</sup>Agency] as such a board).

#### Textual Amendments

**F160** Words in s. 106 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Modifications etc. (not altering text)

**C58** S. 106 excluded (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, ss. 19, 120(2), **Sch. 5 Pt. II para. 13(2)**, **Sch. 23 Pt. II para. 23** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M41** 1991 c. 59.

**M42** 1988 c. 41.

**M43** 1991 c. 59.

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### *Main river functions*

#### **107 Main river functions under the Land Drainage Act 1991.**

- (1) This section has effect for conferring functions in relation to main rivers on the <sup>F161</sup>Agency] which are functions of drainage boards in relation to other watercourses.
- (2) Notwithstanding subsection (3) of section 21 of the Land Drainage Act 1991 (power to secure compliance with drainage obligations), the powers of the <sup>F161</sup>Agency] in relation to a main river shall, by virtue of this section, include the powers which under that section are exercisable otherwise than in relation to a main river by the drainage board concerned; and the provisions of that section shall have effect accordingly.
- (3) The powers of the <sup>F161</sup>Agency] in relation to a main river shall, by virtue of this section, include the powers which under section 25 of the Land Drainage Act 1991 (powers for securing the maintenance of flow of watercourses) are exercisable in relation to an ordinary watercourse by the drainage board concerned; and the provisions of that section and section 27 of that Act shall have effect accordingly.
- (4) Sections 33 and 34 of the Land Drainage Act 1991 (commutation of obligations) shall have effect where—
  - (a) any person is under an obligation imposed on him by reason of tenure, custom, prescription or otherwise to do any work in connection with the drainage of land (whether by way of repairing banks or walls, maintaining watercourses or otherwise); and
  - (b) that work is in connection with a main river,
 as they have effect in relation to an obligation to do work otherwise than in connection with a main river but as if the <sup>F161</sup>Agency] were under a duty to take steps to commute the obligation and the references in those sections to the drainage board for the internal drainage district where the works fall to be done were omitted.
- (5) In this section—
  - (a) references to the exercise of a power in relation to a main river shall include a reference to its exercise in connection with a main river or in relation to the banks of such a river or any drainage works in connection with such a river; and
  - (b) expressions used both in this section and in a provision applied by this section have the same meanings in this section as in that provision.
- (6) The functions of the <sup>F161</sup>Agency] by virtue of this section are in addition to the functions of the <sup>F161</sup>Agency] which by virtue of the provisions of the <sup>M44</sup>Land Drainage Act 1991 are exercisable by the <sup>F161</sup>Agency] concurrently with an internal drainage board.

#### **Textual Amendments**

**F161** Words in s. 107 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### **Marginal Citations**

**M44** 1991 c. 59.

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## **108 Schemes for transfer to the [<sup>F162</sup>Agency] of functions in relation to main river.**

- (1) The [<sup>F162</sup>Agency] may at any time prepare and submit to either of the Ministers for confirmation a scheme making provision for the transfer to the [<sup>F162</sup>Agency] from any drainage body of—
  - (a) all rights, powers, duties, obligations and liabilities (including liabilities incurred in connection with works) over or in connection with a main river; and
  - (b) any property held by the drainage body for the purpose of, or in connection with, any functions so transferred;
 and the [<sup>F162</sup>Agency] shall prepare such a scheme and submit it to one of the Ministers if it is directed to do so by that Minister.
- (2) A scheme prepared and submitted under subsection (1) above may make provisions for any matter supplemental to or consequential on the transfers for which the scheme provides.
- (3) The Minister to whom a scheme is submitted under this section may by order made by statutory instrument confirm that scheme; and Schedule 14 to this Act shall have effect with respect to the procedure to be followed in connection with the making of such an order and with respect to challenges to such orders.
- (4) An order under this section may contain provisions with respect to the persons by whom all or any of the expenses incurred by the Ministers or other persons in connection with the making or confirmation of the order, or with the making of the scheme confirmed by the order, are to be borne.
- (5) Where, under a scheme made by the [<sup>F162</sup>Agency] under this section, liabilities incurred in connection with drainage works are transferred to the [<sup>F162</sup>Agency] from a local authority, the [<sup>F162</sup>Agency] may require the local authority to make contributions to the [<sup>F162</sup>Agency] towards the discharge of the liabilities.
- (6) If the amount to be paid by a local authority by way of contributions required under subsection (5) above is not agreed between the [<sup>F162</sup>Agency] and the local authority, it shall be referred to the arbitration of a single arbitrator appointed—
  - (a) by agreement between them; or
  - (b) in default of agreement, by the Ministers.
- (7) The relevant Minister shall by regulations provide for the payment, subject to such exceptions or conditions as may be specified in the regulations, of compensation by the [<sup>F162</sup>Agency] to any officer or other employee of a drainage body who suffers loss of employment or loss or diminution of emoluments which is attributable to a scheme under this section or anything done in pursuance of such a scheme.
- (8) Regulations under subsection (7) above may include provision—
  - (a) as to the manner in which and the persons to whom any claim for compensation by virtue of the regulations is to be made; and
  - (b) for the determination of all questions arising under the regulations.
- (9) In this section—
 

“drainage body” means an internal drainage board or any other body having power to make or maintain works for the drainage of land;

“the relevant Minister”—

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- (a) in relation to employees of a drainage body wholly in Wales, means the Secretary of State;
- (b) in relation to employees of a drainage body partly in Wales, means the Ministers; and
- (c) in any other case, means the Minister.

#### Textual Amendments

**F162** Words in s. 108 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

### 109 Structures in, over or under a main river.

- (1) No person shall erect any structure in, over or under a watercourse which is part of a main river except with the consent of and in accordance with plans and sections approved by the [<sup>F163</sup>Agency].
- (2) No person shall, without the consent of the [<sup>F163</sup>Agency], carry out any work of alteration or repair on any structure in, over or under a watercourse which is part of a main river if the work is likely to affect the flow of water in the watercourse or to impede any drainage work.
- (3) No person shall erect or alter any structure designed to contain or divert the floodwaters of any part of a main river except with the consent of and in accordance with plans and sections approved by the [<sup>F163</sup>Agency].
- (4) If any person carries out any work in contravention of this section the [<sup>F163</sup>Agency] may—
  - (a) remove, alter, or pull down the work; and
  - (b) recover from that person the expenses incurred in doing so.
- (5) Subsections (1) and (2) above shall not apply to any work carried out in an emergency; but a person carrying out any work excepted from those subsections by this subsection shall inform the [<sup>F163</sup>Agency] in writing as soon as practicable—
  - (a) of the carrying out of the work; and
  - (b) of the circumstances in which it was carried out.
- (6) Nothing in this section shall be taken to affect any enactment requiring the consent of any government department for the erection of a bridge or any powers exercisable by any government department in relation to a bridge.

#### Textual Amendments

**F163** Words in s. 109 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### Modifications etc. (not altering text)

- C59** S. 109 modified (16.3.1992) by London Government Act 1992 (c. iii), s. 32(9)(10)  
S. 109 modified (18.12.1996) by 1996 c. 61, s. 52, **Sch. 15 Pt. III para. 11**
- C60** S. 109 amended (16.3.1992) by Aire and Calder Navigation Act 1992 (c. iv), s. 33(12)
- C61** S. 109 amended (18.6.1992) by British Railways (No. 2) Act 1992 (c. xi), s. 42(8)
- C62** S. 109 amended (16.3.1992) by Midland Metro Act 1992 (c. vii), s. 21(9)

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- C63** S. 109 excluded (5.11.1993) by 1993 c. 42, s. 25(1) (with s. 30(1), Sch. 2 para. 9).  
**C64** S. 109 applied (21.7.1994) by 1994 c. xv, s. 43(11)  
**C65** S. 109 applied (with modifications) (7.3.1995) by S.I. 1995/519, arts. 3(9), 57-64  
**C66** S. 109 excluded (2.4.2004) by Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (S.I. 2004/757), arts. 1, 4(8)(b)  
**C67** S. 109 excluded (11.2.2005) by Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005/120), arts. 1, 5(9) (with arts. 65, 66)  
**C68** S. 109 modified (22.3.2005) by Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (S.I. 2005/927), Sch. 11 para. 11 (with art. 51)

## 110 Applications for consents and approvals under section 109.

- (1) The [<sup>F164</sup>Agency] may require the payment of an application fee by a person who applies to it for its consent under section 109 above; and the amount of that fee shall be £50 or such other sum as may be [<sup>F165</sup>prescribed].
- (2) A consent or approval required under section 109 above—
  - (a) shall not be unreasonably withheld;
  - (b) shall be deemed to have been given if it is neither given nor refused within the relevant period; and
  - (c) in the case of a consent, may be given subject to any reasonable condition as to the time at which and the manner in which any work is to be carried out.
- (3) For the purposes of subsection (2)(b) above the relevant period is—
  - (a) in the case of a consent, the period of two months after whichever is the later of—
    - (i) the day on which application for the consent is made; and
    - (ii) if at the time when that application is made an application fee is required to be paid, the day on which the liability to pay that fee is discharged;
 and
  - (b) in the case of an approval, the period of two months after application for the approval is made.
- (4) If any question arises under this section whether any consent or approval is unreasonably withheld or whether any condition imposed is reasonable, the question shall—
  - (a) if the parties agree to arbitration, be referred to a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers; and
  - (b) if the parties do not agree to arbitration, be referred to and determined by [<sup>F166</sup>the Minister] or the Secretary of State, according to whether the determination falls to be made in relation to England or Wales.
- (5) The power of the Ministers to make an order under subsection (1) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.
- [<sup>F167</sup>(6) In subsection (1) above “prescribed” means specified in, or determined in accordance with, an order made by the Ministers; and any such order may make different provision for different cases, including different provision in relation to different persons, circumstances or localities.]

*Status: Point in time view as at 01/04/2005.*

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#### Textual Amendments

- F164** Word in s. 110 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F165** Word in s. 110(1) substituted (subject to other provisions of the amending Act) (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 147(1)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**
- F166** Words in s. 110(4)(b) substituted (subject to other provisions of the amending Act) (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 147(2)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**
- F167** S. 110(6) inserted (subject to other provisions of the amending Act) (21.9.1995) by 1995 c. 25, s. 120(1), **Sch. 22 para. 147(3)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

#### *Arrangements with certain authorities*

### 111 Arrangements with navigation and conservancy authorities.

- (1) Subject to subsection (2) below, the [<sup>F168</sup>Agency], with a view to improving the drainage of any land, may enter into an arrangement with a navigation authority or conservancy authority for any of the following purposes, that is to say—
  - (a) the transfer to the [<sup>F168</sup>Agency] of—
    - (i) the whole or any part of the undertaking of the navigation authority or conservancy authority or of any of the rights, powers, duties, liabilities and obligations of that authority; or
    - (ii) any property vested in that authority as such;
  - (b) the alteration or improvement by the [<sup>F168</sup>Agency] of any of the works of the navigation authority or conservancy authority;
  - (c) the making of payments by the [<sup>F168</sup>Agency] to the navigation authority or conservancy authority or by that authority to the [<sup>F168</sup>Agency] in respect of any matter for which provision is made by the arrangement.
- (2) The exercise by the [<sup>F168</sup>Agency] of its power to enter into an arrangement under this section shall require the approval of the Ministers.
- (3) Where the [<sup>F168</sup>Agency] is intending to enter into an arrangement under this section it shall publish a notice of its intention in such manner as may be directed by either of the Ministers.
- (4) Where an arrangement has been made under this section, the [<sup>F168</sup>Agency] shall cause a notice under subsection (5) below to be published in the London Gazette in such form as may be prescribed by regulations made by one of the Ministers.
- (5) A notice under this subsection is a notice—
  - (a) stating that the arrangement has been made; and
  - (b) specifying the place at which a copy of the arrangement may be inspected by persons interested.

#### Textual Amendments

- F168** Words in s. 111 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

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## *Supplemental*

### **112 Flood defence regulations.**

The Ministers shall each have power by regulations to make provision generally for the purpose of carrying into effect the provisions of this Part and the other flood defence provisions of this Act.

### **113 Interpretation of Part IV.**

(1) In this Part—

“banks” means banks, walls or embankments adjoining or confining, or constructed for the purposes of or in connection with, any channel or sea front, and includes all land and water between the bank and low-watermark;

“drainage” includes—

- (a) defence against water, including sea water;
- (b) irrigation other than spray irrigation; <sup>F169</sup> . . .
- (c) warping; [<sup>F170</sup> and
- (d) the carrying on, for any purpose, of any other practice which involves management of the level of water in a watercourse;]

“flood defence” means the drainage of land and the provision of flood warning systems;

“main river” (subject to section 137(4) below) means a watercourse shown as such on a main river map and includes any structure or appliance for controlling or regulating the flow of water into, in or out of the channel which—

- (a) is a structure or appliance situated in the channel or in any part of the banks of the channel; and
- (b) is not a structure or appliance vested in or controlled by an internal drainage board;

“watercourse” shall be construed as if for the words from “except” onwards in the definition in section 221(1) below there were substituted the words “except a public sewer”.

(2) If any question arises under this Part—

- (a) whether any work is a drainage work in connection with a main river; or
  - (b) whether any proposed work will, if constructed, be such a drainage work,
- the question shall be referred to one of the Ministers for decision or, if either of the parties so requires, to arbitration.

(3) Where any question is required under subsection (2) above to be referred to arbitration it shall be referred to the arbitration of a single arbitrator appointed—

- (a) by agreement between the parties; or
- (b) in default of agreement, by the President of the Institution of Civil Engineers, on the application of either party.

(4) Nothing in this Part shall affect the powers exercisable by the [<sup>F171</sup>Agency] under any local Act, as they existed immediately before the coming into force of this Act.

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**Textual Amendments**

- F169** Word in definition in s. 113(1) repealed (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(3), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F170** Words in definition in s. 113(1) added (subject to other provisions of the amending Act) (21.9.1995) by 1995 c. 25, **s. 100(1)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**
- F171** Word in s. 113(4) substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

**Modifications etc. (not altering text)**

- C69** S. 113 definitions of "main river" and "banks" applied by [London Docklands Railway Act 1991](#) (c. xxiii), **s. 7(2)(b)**

**PART V**

**GENERAL CONTROL OF FISHERIES**

**Modifications etc. (not altering text)**

- C70** [Pt. V](#) (ss. 114-116): certain functions transferred to the Environment Agency (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, **s. 2(1)(a)(v)** (with ss. 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

**F172** **114** .....

**Textual Amendments**

- F172** [S. 114](#) repealed (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1) (3), **Sch. 22 para. 148**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

**115 Fisheries orders.**

- (1) Subject to the following provisions of this section, each of the Ministers shall have power, on an application made to him by the [<sup>F173</sup>Agency], by order made by statutory instrument to make provision in relation to an area defined by the order for the modification, in relation to the fisheries in that area—
- (a) of any provisions of the <sup>M45</sup>Salmon and Freshwater Fisheries Act 1975 relating to the regulation of fisheries;
  - [<sup>F174</sup>(b) of section 142 or 156 below or paragraph 6 or 7 of Schedule 25 to this Act; or]
  - (c) of any provisions of a local Act relating to any fishery in that area.
- (2) An order under this section—
- (a) may contain such supplemental, consequential and transitional provision, including provision for the payment of compensation to persons injuriously affected by the order, as may appear to be necessary or expedient in connection with the other provisions of the order; but

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- (b) shall not apply to any waters in respect of which either of the Ministers has granted a licence under section 29 of the Salmon and Freshwater Fisheries Act 1975 (fish rearing licences).
- (3) Before either of the Ministers makes an order under this section he shall—
  - (a) send to the [<sup>F173</sup>Agency] a copy of the draft order; and
  - (b) notify the [<sup>F173</sup>Agency] of the time within which, and the manner in which, objections to the draft order may be made to him.
- (4) Neither of the Ministers shall make an order under this section unless the [<sup>F173</sup>Agency] has caused notice of—
  - (a) that Minister's intention to make the order;
  - (b) the place where copies of the draft order may be inspected and obtained; and
  - (c) the matters notified under subsection (3)(b) above,
 to be published in the London Gazette and, if it is directed to do so by one of the Ministers, in such other manner as that Minister thinks best adapted for informing persons affected.
- (5) Before either of the Ministers makes an order under this section he-
  - (a) shall consider any objection which may be duly made to the draft order; and
  - (b) may cause a public local inquiry to be held with respect to any such objections.
- (6) A statutory instrument containing an order under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament; and, where a statutory instrument is laid before Parliament for the purposes of this paragraph, a copy of the report of any local inquiry held with respect to objections considered in connection with the making of the order contained in that instrument shall be so laid at the same time.
- (7) Where—
  - (a) any fishery, land or foreshore proposed to be comprised in an order under this section [<sup>F175</sup>making provision, by virtue of subsection (1)(b) above, for the modification of section 156 below in relation to fisheries in an area]; or
  - (b) any fishery proposed to be affected by any such order; or
  - (c) any land over which it is proposed to acquire an easement under any such order,
 belongs to Her Majesty in right of the Crown or forms part of the possessions of the Duchy of Lancaster or the Duchy of Cornwall or belongs to, or is under the management of, any government department, the order may be made by one of the Ministers only if he has previously obtained the consent of the appropriate authority.
- (8) In subsection (7) above “the appropriate authority”—
  - (a) in the case of any foreshore under the management of the Crown Estate Commissioners or of any fishery or land belonging to Her Majesty in right of the Crown, means those Commissioners;
  - (b) in the case of any foreshore, fishery or land forming part of the possessions of the Duchy of Lancaster, means the Chancellor of the Duchy;
  - (c) in the case of any foreshore, fishery or land forming part of the possessions of the Duchy of Cornwall, means the Duke of Cornwall or the persons for the time being empowered to dispose for any purpose of the land of the Duchy;

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- (d) in the case of any foreshore, fishery or land which belongs to or is under the management of a government department, means that government department.
- (9) In this section “foreshore” includes the shore and bed of the sea and of every channel, creek, bay, estuary and navigable river as far as the tide flows.

#### Textual Amendments

- F173** Words in s. 115 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F174** S. 115(1)(b) substituted (subject to other provisions of the amending Act) (21.9.1995) by 1995 c. 25, s. 105, **Sch. 15 para. 25** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3** (with art. 4)
- F175** Words in s. 115(7)(a) inserted (subject to other provisions of the amending Act) (21.9.1995) by 1995 c. 25, s. 116, **Sch. 21 Pt. I para. 2(2)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

#### Modifications etc. (not altering text)

- C71** S. 115 excluded by S.I. 1999/1746, **arts. 1(1), 4(1)** (with art. 2) (the exclusion coming into force immediately before the principal appointed day (1.7.1999 appointed by S.I. 1998/3178, **art. 3**))

#### Marginal Citations

- M45** 1975 c. 51.

### 116 Power to give effect to international obligations.

Each of the Ministers shall have power by regulations to provide that the provisions of this Part or of any other enactment relating to the carrying out by the [<sup>F176</sup>Agency] of such of its functions as relate to fisheries shall have effect with such modifications as may be prescribed by the regulations for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect—

- (a) to any Community obligations; or
- (b) to any international agreement to which the United Kingdom is for the time being a party.

#### Textual Amendments

- F176** Words in s. 116 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### Modifications etc. (not altering text)

- C72** S. 116 excluded by S.I. 1999/1746, **arts. 1(1), 4(1)** (with art. 2) (the exclusion coming into force immediately before the principal appointed day (1.7.1999 appointed by S.I. 1998/3178, **art. 3**))

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PART VI

FINANCIAL PROVISIONS IN RELATION TO THE [F177 AGENCY]

Textual Amendments

**F177** Word in the heading to Pt. VI substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

CHAPTER I

GENERAL FINANCIAL PROVISIONS

**F178** 117 .....

Textual Amendments

**F178** S. 117 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 149**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**118 Special duties with respect to flood defence revenue.**

- (1) Revenue raised by the [F179 Agency] as mentioned in subsection (2) below—
- (a) shall, except for any amount falling within subsection (3) below, be spent only in the carrying out of the [F179 Agency's] flood defence functions in or for the benefit of the local flood defence district in which it is raised; and
  - (b) shall be disregarded in determining the amount of any surplus for the purposes of [F180 section 44(4) of the 1995 Act].
- (2) The revenue referred to in subsection (1) above is revenue raised by the [F179 Agency] in a local flood defence district—
- (a) by virtue of any regulations under section 74 of the <sup>M46</sup>Local Government Finance Act 1988 (power to issue levies);
  - (b) by general drainage charges under sections 134 [F181 and 135] below;
  - (c) by special drainage charges under sections 137 and 138 below; or
  - (d) by contributions required under section 139(1) below.
- (3) An amount falls within this subsection if it is an amount which the [F179 Agency] considers it appropriate—
- (a) to set aside towards research or related activities or towards meeting the [F179 Agency's] administrative expenses; or
  - (b) to be paid by way of contribution towards expenses incurred by the [Agency] or any regional flood defence committee under arrangements made for the purposes of section 106(1)(b) above.
- (4) Any amount specified in a resolution under section 58(1)(b) of the <sup>M47</sup>Land Drainage Act 1991 in relation to any local flood defence district (allocation of revenue in lieu

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of contributions) shall be treated for the purposes of this section as if it were revenue actually raised by contributions required under section 139(1) below.

(5) For the purposes of this section, the following sums, that is to say—

(a) any sums held by the [<sup>F179</sup>Agency] by virtue of any transfer of property, rights or liabilities from a water [<sup>F179</sup>agency] in accordance with a scheme under Schedule 2 to the <sup>M48</sup>Water Act 1989, in so far as those sums represent amounts which the water [<sup>F179</sup>Agency] was required by virtue of paragraph 31 of Schedule 3 to the <sup>M49</sup>Water Act 1973 to spend only in the discharge of their land drainage functions in or for the benefit of a particular local land drainage district; and

(b) any sums raised by the [<sup>F179</sup>Agency] in a flood defence district by virtue of a precept issued under section 46 of the <sup>M50</sup>Land Drainage Act 1976,

shall be treated as revenue raised by the [<sup>F179</sup>Agency] as mentioned in subsection (2) above in the corresponding local flood defence district or, as the case may be, in that local flood defence district.

(6) For the purposes of this section so much of the area of a regional flood defence committee as is an area in relation to which no local flood defence scheme is in force shall be treated as a single local flood defence district.

#### Textual Amendments

**F179** Words in s. 118 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F180** Words in s. 118(1)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22, para. 150(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F181** Words in s. 118(2)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22, para. 150(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M46** 1988 c. 41.

**M47** 1991 c. 59.

**M48** 1989 c. 15.

**M49** 1973 c. 37.

**M50** 1976 c. 70.

#### <sup>F182</sup>119 Duties with respect to certain funds raised under local enactments.

[(1) Where the Agency holds any funds, or any interest in any funds, which immediately before the transfer date the National Rivers Authority, by virtue of this subsection as originally enacted, was not permitted to use except for particular purposes, those funds or that interest shall not be used except for the purposes for which they could be used by virtue of this subsection as originally enacted.

(1A) For the purposes of subsection (1) above, “the transfer date” has the same meaning as in Part I of the 1995 Act.]

(2) Any funds to which subsection (1) above applies shall be disregarded in determining the amount of any surplus under [<sup>F183</sup>section 44(3) of the 1995 Act].

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#### Textual Amendments

- F182** S. 119 (1)(1A) substituted (1.4.1996) for s. 119(1) by 1995 c. 25, s. 120(1), **Sch. 22 para. 151(1)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F183** Words in s. 119(2) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 151(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### 120 Contributions between the [<sup>F184</sup>Agency] and certain other authorities.

- (1) Where, on the application of a navigation authority, harbour authority or conservancy authority, it appears to the [<sup>F184</sup>Agency] that any works constructed or maintained by the applicants have made, or will make, a beneficial contribution towards the fulfilment of the purposes of the [<sup>F184</sup>Agency's] water resources functions, the [<sup>F184</sup>Agency] shall contribute towards the expenditure incurred or to be incurred by the applicants in constructing or maintaining those works.
- (2) Where, on the application of the [<sup>F184</sup>Agency], it appears to a navigation authority, harbour authority or conservancy authority that any works constructed or maintained by the [<sup>F184</sup>Agency] in the carrying out of its water resources functions have made, or will make, a beneficial contribution towards the carrying out of the functions of the authority to whom the application is made, that authority shall contribute to the [<sup>F184</sup>Agency] towards the expenditure incurred or to be incurred by the [<sup>F184</sup>Agency] in constructing or maintaining those works.
- (3) Subject to the following provisions of this section, the sums to be paid by way of contribution and the terms and conditions on which they are to be paid shall be such as the [<sup>F184</sup>Agency] and the other authority concerned may agree to be appropriate.
- (4) If on any application under this section—
  - (a) the [<sup>F184</sup>Agency] or, as the case may be, the other authority to whom the application is made refuses to make a contribution; or
  - (b) the [<sup>F184</sup>Agency] and the other authority concerned are unable to agree as to the sums to be contributed or the terms and conditions on which they are to be contributed,the [<sup>F184</sup>Agency] or the other authority concerned may refer the matter in dispute to the Secretary of State.
- (5) On a reference under subsection (4) above the Secretary of State may either—
  - (a) determine that matter himself; or
  - (b) refer it for determination to an arbitrator appointed by him for the purpose;and where any decision has been made by the Secretary of State or an arbitrator under this subsection, the decision shall be final and a contribution shall be made in accordance with the decision as if the sums, terms or conditions determined under this subsection had been agreed to be appropriate as mentioned in subsection (3) above.
- (6) Any expenditure incurred by a navigation authority, harbour authority or conservancy authority in paying any contribution under this section shall be defrayed in the like manner as any corresponding expenditure of that authority; and that authority shall have the same powers for the purpose of raising money required for paying any such contribution as they would have for the purpose of raising money required for defraying any corresponding expenditure of that authority.

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- (7) In subsection (6) above the references to corresponding expenditure of a navigation authority, harbour authority or conservancy authority, in relation to the payment of a contribution in respect of any works, are references to expenditure incurred by the authority in performing the functions in respect of which it is claimed by the [<sup>F184</sup>Agency] that the works have made, or will make, such a beneficial contribution as is mentioned in subsection (2) above.
- (8) References in this section to the water resources functions of the [<sup>F184</sup>Agency] are references to the functions of the [<sup>F184</sup>Agency] under Part II of this Act or under any provisions not contained in that Part which are related water resources provisions in relation to Chapter II of that Part.

#### Textual Amendments

**F184** Words in s. 120 and the sidenote substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

<sup>F185</sup>**121** .....

#### Textual Amendments

**F185** Ss. 121-124 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 152, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

<sup>F186</sup>**122** .....

#### Textual Amendments

**F186** Ss. 121-124 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 152, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

## CHAPTER II

### REVENUE PROVISIONS

#### *Water resources charges*

<sup>F187</sup>**123** .....

#### Textual Amendments

**F187** Ss. 121-124 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 152, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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F188 124 .....

#### Textual Amendments

F188 Ss. 121-124 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 152, Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

### 125 Specific exemptions from water resources charges.

- (1) No charges, other than those for the purpose of recovering administrative expenses attributable to the exercise by the [F189 Agency] of its functions in relation to the application for the licence, shall be levied in respect of water authorised by a licence to be abstracted for use in the production of electricity or any other form of power by any generating station or apparatus of a capacity of not more than five megawatts.
- (2) No charges shall be levied in respect of water authorised by a licence to be abstracted from underground strata, in so far as—
  - (a) the water is authorised to be abstracted for use for agricultural purposes other than spray irrigation; and
  - (b) the quantity of water authorised to be abstracted from the strata in any period of twenty-four hours does not exceed twenty cubic metres in aggregate.

#### Textual Amendments

F189 Word in s. 125 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 128 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

#### Modifications etc. (not altering text)

C73 S. 125(2) modified (18.5.1992) by S.I. 1992/1096, arts. 3, 4, Sch.

### 126 Agreements containing exemptions from charges.

- (1) The [F190 Agency] may, on the application of any person who is liable to pay charges to the [F190 Agency] for the abstraction of water under a licence under Chapter II of Part II of this Act, make an agreement with him either exempting him from the payment of charges or providing for charges to be levied on him at reduced rates specified in the agreement.
- (2) In the exercise of its powers under subsection (1) above in relation to any person, the [Agency] shall have regard to—
  - (a) the extent to which any works constructed at any time by that person or any works to be constructed by him have made, or will make, a beneficial contribution towards the fulfilment of the purposes of the functions of the [F190 Agency] under any enactment;
  - (b) any financial assistance which that person has rendered, or has agreed to render, towards the carrying out of works by the [Agency] in the performance of those functions; and
  - (c) any other material considerations.

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (3) The Secretary of State may give directions as to the exercise by the [<sup>F190</sup>Agency] of its powers under subsection (1) above.
- (4) Without prejudice to the exercise of the power conferred by subsection (3) above, if on any application under this section—
  - (a) the [<sup>F190</sup>Agency] refuses to make an agreement with the applicant as mentioned in subsection (1) above; or
  - (b) the applicant objects to the terms of such an agreement as proposed by the [<sup>F190</sup>Agency] and that objection is not withdrawn,
 the applicant or the [<sup>F190</sup>Agency] may refer the question in dispute to the Secretary of State.
- (5) On a reference under subsection (4) above—
  - (a) the Secretary of State shall determine the question in dispute, having regard to the matters to which, in accordance with subsection (2) above, the [<sup>F190</sup>Agency] was required to have regard in relation to the applicant; and
  - (b) may give directions to the [<sup>F190</sup>Agency] requiring it to make an agreement with the applicant in accordance with his decision.
- <sup>F191</sup>(6) .....
- (7) Any decision of the Secretary of State on a reference under subsection (4) above shall be final; and section 69 above shall apply in relation to the decision on a reference under this section as it applies in relation to a decision on a reference such as is mentioned in subsection (1)(b) of that section, but as if references to the other party were references to the applicant.

#### Textual Amendments

- F190** Words in s. 126 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F191** S. 126(6) repealed (21.9.1995) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 153, Sch. 24** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

## 127 Special charges in respect of spray irrigation.

- (1) Where a person (“the applicant”) is for the time being the holder of a licence under Chapter II of Part II of this Act to abstract water (“the applicant’s licence”), and in accordance with the provisions of that licence—
  - (a) the water is to be used on land of which the applicant is the occupier; and
  - (b) the purposes for which water abstracted in pursuance of the licence is to be used consist of or include spray irrigation,
 the applicant may apply to the [<sup>F192</sup>Agency] to make an agreement with him under this section and, subject to the following provisions of this section and sections 128 and 129 below, the [<sup>F192</sup>Agency] may make such an agreement accordingly.
- (2) During any period for which an agreement under this section is in force, the following charges shall be payable by the applicant to the [<sup>F192</sup>Agency] in respect of the applicant’s licence, in so far as it relates to water authorised to be abstracted and used on the relevant land, that is to say—

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- (a) basic charges calculated, in accordance with the agreement, by reference to the quantity of water authorised to be so abstracted and used from time to time in pursuance of the licence; and
  - (b) supplementary charges calculated, in accordance with the agreement, by reference to the quantity of water which is measured or assessed as being abstracted from time to time by or on behalf of the applicant from the source of supply to which the applicant's licence relates for use on the relevant land.
- (3) In determining—
  - (a) whether to make an agreement with the applicant under this section; and
  - (b) the charges to be leviable under such an agreement,the [<sup>F192</sup>Agency] shall have regard to the extent to which, in any year within the period proposed to be specified in the agreement as the period for which it is made, the quantity of water referred to in paragraph (a) of subsection (2) above is likely to exceed the quantity referred to in paragraph (b) of that subsection.
- (4) Where the applicant's licence authorises water abstracted in pursuance of the licence to be used on the relevant land for purposes which include spray irrigation and other purposes—
  - (a) any agreement made under this section shall provide for apportioning, as between those purposes respectively, the quantity referred to in paragraph (a) of subsection (2) above and the quantity referred to in paragraph (b) of that subsection;
  - (b) subsection (2) above shall have effect as if in each of those paragraphs the reference to the quantity of water mentioned in that paragraph were a reference to so much of that quantity as in accordance with the agreement is apportioned to the purpose of spray irrigation; and
  - (c) in subsection (3) above any reference to either of those paragraphs shall be construed as a reference to that paragraph as modified by paragraph (b) of this subsection.
- (5) An application under subsection (1) above may be made by a person who has applied for, but is not yet the holder of, a licence under Chapter II of Part II of this Act to abstract water; and, in relation to an application so made or to an agreement made on such an application—
  - (a) the reference in that subsection to the provisions of the applicant's licence shall be construed as a reference to the proposals contained in the application for a licence; and
  - (b) any other reference in this section or in section 128 or 129 below to the applicant's licence shall be construed as a reference to any licence granted to the applicant in pursuance of the application mentioned in paragraph (a) above or in pursuance of an appeal consequential upon the application so mentioned.
- (6) In this section and sections 128 and 129 below—
  - “the applicant” and “the applicant's licence” shall be construed, subject to subsection (5) above, in accordance with subsection (1) above;
  - “the relevant land” means the land on which the applicant's licence, as for the time being in force, authorises water abstracted in pursuance of the licence to be used for purposes which consist of or include spray irrigation; and
  - “year” means a period of twelve months beginning—
    - (a) with the date on which an agreement under this section comes into force or is proposed to come into force; or

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- (b) with an anniversary of that date.

#### Textual Amendments

**F192** Words in s. 127 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 128 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

#### Modifications etc. (not altering text)

**C74** S. 127(1)(4) modified (18.5.1992) by S.I. 1992/1096, arts. 3, 4, Sch.

### 128 Duration of agreement under section 127.

- (1) The period specified in an agreement under section 127 above as the period for which it is made shall not be less than five years.
- (2) An agreement under section 127 above shall remain in force until the occurrence of whichever of the following events first occurs, that is to say—
  - (a) the period specified in the agreement, as mentioned in subsection (1) above, comes to an end;
  - (b) the applicant's licence expires or is revoked;
  - (c) the applicant ceases to be the occupier of the relevant land or, if he has previously ceased to be the occupier of a part or parts of that land, ceases to be the occupier of the remainder of it;
  - (d) the agreement is terminated under subsection (4) below.
- (3) At any time while an agreement under section 127 above is in force, the applicant may apply to the [<sup>F193</sup>Agency] to terminate the agreement.
- (4) If, on an application for the termination of an agreement under section 127 above, the [<sup>F193</sup>Agency] is satisfied that, by reason of any change of circumstances since the agreement was made, it ought to be terminated, it may terminate the agreement, either unconditionally or subject to such conditions (whether as to any payment to be made by the applicant or otherwise) as the [<sup>F193</sup>Agency] and the applicant may agree.

#### Textual Amendments

**F193** Words in s. 128 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 128 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

### 129 Directions and appeals with respect to exercise of powers under sections 127 and 128.

- (1) The Secretary of State may give directions as to the exercise by the [<sup>F194</sup>Agency] of its powers under sections 127 and 128 above.
- (2) Without prejudice to the exercise of the power conferred by subsection (1) above, if on any application under section 127 or 128 above—
  - (a) the [<sup>F194</sup>Agency] refuses to make or terminate an agreement under section 127 above; or
  - (b) the applicant objects to the proposals of the [<sup>F194</sup>Agency]—
    - (i) as to the terms of such an agreement; or

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- (ii) as to the conditions subject to which such an agreement is to be terminated,  
 and that objection is not withdrawn,  
 the applicant or the [<sup>F194</sup>Agency] may refer the question in dispute to the Secretary of State.
- (3) On a reference under subsection (2) above—
- (a) the Secretary of State shall determine the question in dispute, having regard to the matters to which, in accordance with subsection (3) of section 127 above, the [<sup>F194</sup>Agency] would be required to have regard in relation to the applicant on an application under that section; and
  - (b) may give directions to the [<sup>F194</sup>Agency] requiring it to make an agreement with the applicant in accordance with his decision.
- <sup>F195</sup>(4) .....
- (5) Any decision of the Secretary of State on a reference under subsection (2) above shall be final; and section 69 above shall apply in relation to the decision on a reference under this section as it applies in relation to a decision on a reference such as is mentioned in subsection (1)(b) of that section, but as if references to the other party were references to the applicant.

#### Textual Amendments

- F194** Words in s.129 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F195** S. 129(4) repealed (21.9.1995) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 153** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

### 130 Charges in respect of abstraction from waters of British Waterways Board.

- (1) Where the British Waterways Board are the holders of a licence under Chapter II of Part II of this Act authorising abstraction from any inland waters to which section 66 above applies, then, the charges which, apart from this subsection, would be payable in respect of that licence either—
- (a) shall be reduced to such extent, and as so reduced shall be payable subject to such conditions; or
  - (b) shall not be payable,
- as the Board and the [<sup>F196</sup>Agency] may agree or, in default of such agreement, the Secretary of State may determine.
- (2) Where—
- (a) a person other than the British Waterways Board is the holder of a licence under Chapter II of Part II of this Act authorising abstraction from any inland waters to which section 66 above applies; and
  - (b) any charges in respect of that licence are payable,
- the [<sup>F196</sup>Agency] shall pay to the Board such proportion of those charges, subject to such conditions, as the Board and the [<sup>F196</sup>Agency] may agree, or, in default of such agreement, the Secretary of State may determine.

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

**Textual Amendments**

**F196** Words in s. 130 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

*Charges in connection with control of pollution*

<sup>F197</sup>**131** .....

**Textual Amendments**

**F197** Ss. 131, 132 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 154, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

<sup>F198</sup>**132** .....

**Textual Amendments**

**F198** Ss. 131, 132 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 154, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

*Levies by the [<sup>F199</sup>Agency] on local authorities*

**Textual Amendments**

**F199** Word in cross-heading to s. 133 substituted (subject to other provisions of amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**133**     **Power to authorise the [<sup>F200</sup>Agency] to issue levies.**

For the purposes of its flood defence functions the [<sup>F200</sup>Agency] shall be a levying body within the meaning of section 74 of the <sup>M51</sup>Local Government Finance Act 1988 (power to make regulations authorising a levying body to issue a levy); and that section shall have effect accordingly.

**Textual Amendments**

**F200** Words in s. 133 and the sidenote substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**Marginal Citations**

**M51** 1988 c. 41.

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### General drainage charges

#### 134 Raising of general drainage charges.

- (1) Subject to subsection (2) below, the [<sup>F201</sup>Agency] may raise at an amount per hectare of chargeable land in a local flood defence district a charge to be known as a general drainage charge and to be levied in accordance with sections 135 and 136 below.
- (2) The [<sup>F201</sup>Agency] shall not levy a general drainage charge in respect of any local flood defence district unless the regional flood defence committee for the area in which that district is situated have recommended that such a charge should be raised.
- (3) For the purposes of this section and sections 135 and 136 below the area of a regional flood defence committee in relation to which no local flood defence scheme is in force shall be treated as a single local flood defence district; and any parts of such an area in relation to which no such scheme is in force shall be treated as included in a single such district.

#### Textual Amendments

**F201** Words in s. 134 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Modifications etc. (not altering text)

**C75** S. 134 restricted (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(2), 4(2), **Sch. 2 Pt. I para. 2(2)**

#### 135 Amount, assessment etc. of general drainage charge.

- (1) A general drainage charge raised by the [<sup>F202</sup>Agency] for a local flood defence district for any year shall be at a uniform amount per hectare of chargeable land in that district.
- (2) The uniform amount referred to in subsection (1) above shall be ascertained, subject to subsection (3) below, by multiplying the relevant quotient <sup>F203</sup> . . . by one penny and by such number as may be specified by either of the Ministers by order made for the purposes of this subsection.
- (3) The number specified in an order under this section for the purposes of subsection (2) above shall (apart from any adjustment made to it to take account of rough grazing land) be such as the Minister making the order considers will secure, so far as reasonably practicable, that the amount specified in paragraph (a) below will be equal to the amount specified in paragraph (b) below, that is to say—
  - (a) the aggregate amount produced by any charge levied by reference to a relevant quotient <sup>F204</sup> . . .; and
  - (b) the aggregate amount which, if the chargeable land in the local flood defence district had been liable to be rated for the financial year beginning in 1989, would have been produced by a rate levied on the land at an amount in the pound (of rateable value) equal to that quotient multiplied by one penny.
- (4) An order under this section may be made so as to apply either—
  - (a) to all general drainage charges; or
  - (b) to the general drainage charges proposed to be raised in any one or more local flood defence districts specified in the order;

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and any such order applying to more than one local flood defence district may make different provision as respects the different districts to which it applies.

(5) Schedule 15 to this Act shall have effect with respect to the assessment, incidence, payment and enforcement of general drainage charges.

(6) The power of each of the Ministers to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

[<sup>F205</sup>(7) In this section “relevant quotient” means a quotient determined for the year concerned in accordance with rules contained in regulations made by either of the Ministers.]

#### Textual Amendments

**F202** Word in s. 135 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F203** Words in s. 135(2) repealed (1.8.1992 subject to savings in S.I. 1992/1755, **art. 2(2)**) by Local Government Finance Act 1992 (c. 14), s. 117(1)(2), Sch. 13 para. 96(1), **Sch. 14** (with s. 118(1)(2)(4)); S.I. 1992/1755, **art. 2(1)**

**F204** Words in s. 135(3)(a) repealed (1.8.1992 subject to savings in S.I. 1992/1755, **art. 2(2)**) by Local Government Finance Act 1992 (c. 14), s. 117(1)(2), Sch. 13 para. 96(2), **Sch. 14** (with s. 118(1)(2)(4)); S.I. 1992/1755, **art. 2(1)**

**F205** S. 135(7) added (1.8.1992 subject to savings in S.I. 1992/1755, **art. 2(2)**) by Local Government Finance Act 1992 (c. 14), s. 117(1), **Sch. 13 para. 96(3)** (with s. 118(1)(2)(4)); S.I. 1992/1755, **art. 2(1)**

#### Modifications etc. (not altering text)

**C76** S. 135 restricted (1.12.1991) by Water Consolidation (Consequential Provisions) Act 1991 (c. 60, SIF 130), ss. 2(2), 4(2), **Sch. 2 Pt. I para. 2(2)**.

<sup>F206</sup>136 .....

#### Textual Amendments

**F206** S. 136 repealed (1.8.1992 subject to savings in S.I. 1992/1755, **art. 2(2)**) by Local Government Finance Act 1992 (c. 14), s. 117(1)(2), Sch. 13 para. 97, **Sch. 14** (with s. 118(1)(2)(4)); S.I. 1992/1755, **art. 2(1)**

### *Special drainage charges*

#### 137 Special drainage charges in interests of agriculture.

(1) Where it appears to the [<sup>F207</sup>Agency] that the interests of agriculture require the carrying out, improvement or maintenance of drainage works in connection with any watercourses in the area of any regional flood defence committee, the [Agency] may submit to either of the Ministers for confirmation a scheme under this section with respect to those watercourses.

(2) A scheme under this section with respect to any watercourses is a scheme—

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- (a) designating those watercourses, and any watercourses connected with them, for the purposes of this section; and
  - (b) making provision for the raising, in accordance with section 138 below, of a charge (known as a “special drainage charge”) for the purpose of meeting the expenses of drainage works in connection with the designated watercourses and any expenses arising from such works.
- (3) A scheme under this section shall designate for the purposes of the special drainage charge so much of the area of the regional flood defence committee as consists of land which, in the opinion of the [<sup>F207</sup>Agency], is agricultural land that would benefit from drainage works in connection with the designated watercourses.
- (4) The watercourses designated in any scheme under this section shall, if the scheme is confirmed, be treated for the purposes of this Act and the <sup>M52</sup>Land Drainage Act 1991 as part of a main river.
- (5) A scheme under this section-
  - (a) may make provision for any of the matters referred to in subsections (1) and (2) of section 108 above; and
  - (b) may provide for the revocation or amendment of, and for the retransfer of property, rights, powers, duties, obligations and liabilities transferred by, any previous scheme under this section.
- (6) Schedule 16 to this Act shall have effect with respect to the making and confirmation of schemes under this section.
- (7) For the purposes of this section—
  - (a) the reference to expenses of drainage works is a reference to expenses incurred in the construction, improvement or maintenance of drainage works;
  - (b) the expenses of any drainage works which may be necessary in consequence of other drainage works, and so much of any contribution made under section 57 of the <sup>M53</sup>Land Drainage Act 1991 as is fairly attributable to such expenses, shall be deemed to be expenses arising from those other drainage works; and
  - (c) the expenses of any drainage works shall be taken (without prejudice to section 221(5) below) to include a proper proportion of the cost of the officers and buildings and establishment of the authority carrying them out.
- (8) In this section and Schedule 16 to this Act “watercourse” has the same meaning as in Part IV of this Act.

#### Textual Amendments

**F207** Words in s. 137 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M52** 1991 c. 59.

**M53** 1991 c. 59.

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### **138    Levying and amount of special drainage charge.**

- (1) A special drainage charge shall be levied by the [<sup>F208</sup>Agency] in respect of chargeable land included in the area designated for the purposes of the charge by the scheme authorising it ("the relevant chargeable land").
- (2) The special drainage charge raised for any year shall be at a uniform amount per hectare of the relevant chargeable land.
- (3) The uniform amount referred to in subsection (2) above shall be determined by the regional flood defence committee for the area which includes the relevant chargeable land but shall exceed neither—
  - (a) an amount to be specified in the scheme as the maximum amount of the charge or such greater amount as may be authorised for the purposes of the scheme by an order made by one of the Ministers on the application of the [<sup>F208</sup>Agency]; nor
  - (b) twenty-five pence or such other amount as may be substituted for twenty-five pence by an order made by one of the Ministers and approved by a resolution of the House of Commons.
- (4) Before either of the Ministers makes an order under subsection (3)(a) above he shall—
  - (a) consult with such of the associations and persons concerned as he considers appropriate;
  - (b) cause a notice of his intention to make the order, and of the time (which shall not be less than thirty days) within which objections to the proposed order may be made to him, to be published in such manner as he thinks best adapted for informing persons affected;
  - (c) if he considers it necessary, afford such persons an opportunity of appearing before and being heard by a person appointed by him for the purpose; and
  - (d) consider the report of the person so appointed and any objections duly made.
- (5) An order under subsection (3)(b) above may be made so as to apply—
  - (a) to special drainage charges in general; or
  - (b) to the special drainage charges proposed to be raised in respect of such areas of regional flood defence committees as may be specified in the order; or
  - (c) to special drainage charges proposed to be raised in pursuance of one or more schemes made under section 137 above and so specified;and any such order applying to the charges proposed to be raised in respect of more than one area of a regional flood defence committee, or authorised by more than one such scheme, may make different provision for the charges in respect of different areas or, as the case may be, the charges authorised by the different schemes.
- (6) The power of each of the Ministers to make an order under subsection (3)(b) above shall be exercisable by statutory instrument; and section 14 of the <sup>M54</sup>Interpretation Act 1978 (power to revoke or amend orders made by statutory instrument) shall apply to the power to make orders under subsection (3)(a) above as it applies, by virtue of this subsection, to the power to make orders under subsection (3)(b) above.
- (7) Schedule 15 to this Act shall have effect with respect to the assessment, incidence, payment and enforcement of special drainage charges.

*Status: Point in time view as at 01/04/2005.*

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#### Textual Amendments

**F208** Words in s. 138 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M54** 1978 c. 30.

### *Revenue from internal drainage boards*

## **139 Contributions from internal drainage boards.**

- (1) Subject to subsections (2) and (3) below, the [F209 Agency] shall by resolution require every internal drainage board to make towards the expenses of the [F209 Agency] such contribution as the [F209 Agency] may consider to be fair.
- (2) Subject to subsection (3) below, where an internal drainage district ("the main internal drainage district") comprises two or more other internal districts ("minor internal drainage districts"), the [F209 Agency] shall not require the drainage board for that district to make any contribution towards the expenses of the [F209 Agency] except in respect of such part, if any, of that district as is not situated within any minor internal drainage district.
- (3) Notwithstanding subsection (2) above, the [F209 Agency], after determining what contribution should be made by the drainage board for each of the minor internal drainage districts, may, if it thinks fit, require the drainage board for the main internal drainage district to pay direct to the [F209 Agency] an amount equal to the aggregate of those contributions.
- (4) If the [F209 Agency] make a requisition under subsection (3) above, the drainage board of the main internal drainage district shall raise the amount paid by them under that subsection to the [F209 Agency] by means of drainage rates levied by them within, or special levies issued in respect of, the main internal drainage district or, as the case may be, such part of that district as is situated within a minor internal drainage district.
- (5) Without prejudice to subsection (3) of section 140 below, a resolution under this section may be acted upon by the [F209 Agency] forthwith, notwithstanding that the time for bringing an appeal under that section has not expired or that an appeal so brought is pending.

#### Textual Amendments

**F209** Words in s. 139 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

## **140 Appeals in respect of resolutions under section 139.**

- (1) If—
  - (a) an internal drainage board is aggrieved by a resolution of the [F210 Agency] under section 139 above determining the amount of any contribution; or

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

- (b) the council of any county [<sup>F211</sup>, county borough] or London borough is aggrieved by any such resolution on the ground that the amount of the contribution required to be made by an internal drainage board is inadequate, the board or council may, within six weeks after the date on which notice of the resolution is given by the [<sup>F210</sup>Agency] to the internal drainage board in question, appeal to the relevant Minister against the resolution.
- (2) On an appeal under this section the relevant Minister may, after—
- (a) considering any objections made to him; and
  - (b) if he thinks fit, holding a local public inquiry,
- make such an order in the matter as he thinks just.
- (3) Where the [<sup>F210</sup>Agency] has acted on a resolution by virtue of section 139(5) above and an appeal is brought in respect of the resolution, the relevant Minister shall by his order direct such adjustment to be made in respect of any sums recovered or paid in pursuance of the resolution as may be necessary for giving effect to his decision.
- (4) Where the relevant Minister makes an order under this section, he shall lay before Parliament particulars of the matter in respect of which the appeal was made and of the reasons for his order.
- (5) Compliance with any order made by the relevant Minister under this section may be enforced by mandamus.
- (6) In this section “the relevant Minister”—
- (a) in relation to an internal drainage district wholly in Wales or the drainage board for such a district, means the Secretary of State;
  - (b) in relation to an internal drainage district partly in Wales or the drainage board for such a district, means the Ministers; and
  - (c) in any other case, means the Minister.

#### Textual Amendments

**F210** Words in s. 140 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F211** Words in s. 140(1)(b) inserted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 3(3)** (with ss. 54(4)(7), 55(5) Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, **art. 3, Sch. 1**

#### Modifications etc. (not altering text)

**C77** S. 140 extended (1.12.1991) by Land Drainage Act 1991 (c. 59, SIF 73:1), **ss. 58(7), 76(2)**.

### 141 Precepts for recovery of contributions from internal drainage boards.

- (1) The [<sup>F212</sup>Agency] may issue precepts to internal drainage boards requiring payment of any amount required to be contributed by those boards under section 139 above.
- (2) An internal drainage board shall pay, in accordance with any precept issued to them under this section, the amount thereby demanded.
- (3) It shall be the duty of the [<sup>F212</sup>Agency] to prepare, in such form as the relevant Minister may direct, a statement of—

*Status: Point in time view as at 01/04/2005.*

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- (a) the purposes to which the amount demanded by any precept issued by the [<sup>F212</sup>Agency] under this section is intended to be applied; and
  - (b) the basis on which it is calculated;
- and an internal drainage board shall not be liable to pay the amount demanded by any such precept until they have received such a statement.
- (4) Compliance with any precept issued by the [<sup>F212</sup>Agency] in accordance with this section may be enforced by mandamus.
- (5) In this section “the relevant Minister” has the same meaning as in section 140 above.

#### Textual Amendments

**F212** Words in s. 141 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### *Fisheries contributions*

#### **142 Fisheries contributions.**

- (1) Each of the Ministers shall have power, on an application made to him by the [<sup>F213</sup>Agency], by order made by statutory instrument to make provision in relation to an area defined by the order—
- (a) for the imposition on the owners and occupiers of fisheries in that area of requirements to pay contributions to the [<sup>F213</sup>Agency], of such amounts as may be determined under the order, in respect of the expenses of the carrying out in relation to that area of the [<sup>F213</sup>Agency’s] functions with respect to fisheries;
  - (b) for such contributions to be paid or recovered in such manner, and to be refundable, in such circumstances as may be specified in or determined under the order.
- (2) Subsections [<sup>F214</sup>(2) to (6)] of section 115 above shall have effect in relation to the power conferred by subsection (1) above as they have effect in relation to the power conferred by subsection (1) of that section.
- (3) The reference in this section to the owners and occupiers of fisheries shall have the same meaning as any such reference in the <sup>M55</sup>Salmon and Freshwater Fisheries Act 1975.

#### Textual Amendments

**F213** Words in s. 142 substituted (subject to other provisions of amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F214** Words in s. 142(2) substituted (21.9.1995) by 1995 c. 25, s. 116, **Sch. 21 para. 2(3)** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**

#### Modifications etc. (not altering text)

**C78** S. 142 excluded (1.7.1999) by S.I. 1999/1746, **arts. 1(1), 4(1)**; S.I. 1998/3178, **art. 3**

#### Marginal Citations

**M55** 1975 c. 51.

*Status:* Point in time view as at 01/04/2005.

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Navigation tolls

143 Power of Authority to levy navigation tolls.

- (1) Where any navigable waters—
  - (a) in England and Wales; or
  - (b) in so much of the territorial sea adjacent to England and Wales as is included in the area of a regional flood defence committee,are not subject to the control of any navigation authority, harbour authority or conservancy authority, the <sup>F215</sup>Agency] may apply to the Secretary of State for an order imposing tolls in respect of the navigation of vessels in those waters.
- (2) An order under this section shall not be made unless the Secretary of State is satisfied that the cost of the maintenance or works in connection with the waters to which the order relates has been or will be increased as a result of the use of those waters for purposes of navigation.
- (3) Schedule 17 to this Act shall have effect with respect to the making of orders under this section.
- (4) Any tolls payable under this section in respect of the navigation of a vessel in any water referred to in subsection (1) above—
  - (a) may be demanded from the person in charge of the vessel by any person authorised for that purpose by the <sup>F215</sup>Agency]; and
  - (b) if not paid on demand, may be recovered from either the person in charge of the vessel or the owner of the vessel.

Textual Amendments

**F215** Words in s. 143 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 128 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

Modifications etc. (not altering text)

**C79** S. 143 modified (01.12.1991) by Land Drainage Act 1991 (c. 59, SIF 73:1), ss. 56(1), 76(2).  
**C80** S. 143(4) modified (01.12.1991) by Land Drainage Act 1991 (c. 59, SIF 73:1), ss. 56(2), 76(2).

Incidental power of the Authority to impose charges

Interpretation of Chapter II

145 Interpretation of Chapter II.

- In this Chapter—
- “agricultural buildings” has the meaning provided by section 26(4) of the <sup>M56</sup>General Rate Act 1967 as amended by the <sup>M57</sup>Rating Act 1971;
  - “agricultural land” means—
    - (a) land used as arable, meadow or pasture ground only;
    - (b) land used for a plantation or a wood or for the growth of saleable underwood; and

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- (c) land exceeding one tenth of a hectare used for the purpose of poultry farming, market gardens, nursery grounds, orchards or allotments, including allotment gardens within the meaning of the <sup>M58</sup>Allotments Act 1922,

but does not include land occupied together with a house as a park, gardens (other than as aforesaid) or pleasure grounds, land kept or preserved mainly or exclusively for purposes of sport or recreation or land used as a racecourse;

“chargeable land” means the agricultural land and agricultural buildings in so much of the area of a regional flood defence committee as does not fall within an internal drainage district, excluding rough grazing land and woodlands other than commercial woodlands;

“commercial woodlands” means woodlands managed on a commercial basis with a view to the realisation of profits;

“drainage” has the same meaning as in Part IV above;

“drainage charge” means general drainage charge or special drainage charge;

“rough grazing land” means land of either of the following descriptions, that is to say—

- (a) land used as pasture ground on which the vegetation consists solely or mainly of one or more of the following, that is to say, bracken, gorse, heather, rushes and sedge; and
- (b) land so used which is unsuitable for mowing by machine and on which the vegetation consists solely or mainly of grass of poor feeding value; and

“spray irrigation” has the same meaning as in Chapter II of Part II of this Act.

#### Marginal Citations

**M56** 1967 c. 9.

**M57** 1971 c. 39.

**M58** 1922 c. 51.

## CHAPTER III

### GRANTS AND LOANS

*Grants to the <sup>F216</sup> Agency]*

#### Textual Amendments

**F216** Word in s. 146 cross-heading substituted (subject to other provisions of amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

<sup>F217</sup>**146** .....

*Status: Point in time view as at 01/04/2005.*

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Textual Amendments

F217 S. 146 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 155, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

F218147 Grants for drainage works.

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Textual Amendments

F218 Ss. 147-149 repealed (17.3.2004 for E., 1.4.2004 for W.) by Water Act 2003 (c. 37), ss. 69(1), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, art. 2(a)(d); S.I. 2004/910, art. 2(1)(b)

F218148 Grants towards cost of flood warning systems.

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Textual Amendments

F218 Ss. 147-149 repealed (17.3.2004 for E., 1.4.2004 for W.) by Water Act 2003 (c. 37), ss. 69(1), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, art. 2(a)(d); S.I. 2004/910, art. 2(1)(b)

F218149 Other grants in respect of exercise of powers under Part VII for drainage purposes.

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Textual Amendments

F218 Ss. 147-149 repealed (17.3.2004 for E., 1.4.2004 for W.) by Water Act 2003 (c. 37), ss. 69(1), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, art. 2(a)(d); S.I. 2004/910, art. 2(1)(b)

F219150 .....

Textual Amendments

F219 Ss. 150-153 repealed (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 156, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

*Borrowing by the Authority*

F220151 .....

*Status: Point in time view as at 01/04/2005.*

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Textual Amendments

**F220** Ss. 150-153 repealed (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 156** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F221**152 .....

Textual Amendments

**F221** Ss. 150-153 repealed (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 156** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F222**153 .....

Textual Amendments

**F222** Ss. 150-153 repealed (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 156** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

PART VII

LAND AND WORKS POWERS

Modifications etc. (not altering text)

**C81** Pt. VII (ss. 154-186): Transfer of functions (1.4.1996) to the Agency by 1995 c. 25, **s. 2(1)(a)(iv)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

CHAPTER I

POWERS OF THE [F223AGENCY]

Textual Amendments

**F223** Word in Pt. VII Chapter I heading substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

*Provisions in relation to land*

**154** Compulsory purchase etc.

(1) The [F224Agency] may be authorised by either of the Ministers to purchase compulsorily any land anywhere in England and Wales which is required by the

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- [<sup>F224</sup>Agency] for the purposes of, or in connection with, the carrying out of its functions.
- (2) The power of each of the Ministers under subsection (1) above shall include power—
    - (a) to authorise the acquisition of interests in, and rights over, land by the creation of new interests and rights; and
    - (b) by authorising the acquisition by the [<sup>F224</sup>Agency] of any rights over land which is to be or has been acquired by the [<sup>F224</sup>Agency], to provide for the extinguishment of those rights.
  - (3) Without prejudice to the generality of subsection (1) above, the land which the [<sup>F224</sup>Agency] may be authorised under that subsection to purchase compulsorily shall include land which is or will be required for the purpose of being given in exchange for, or for any right over, any other land which for the purposes of the <sup>M59</sup>Acquisition of Land Act 1981 is or forms part of a common, open space or a fuel or field garden allotment.
  - (4) Subject to section 182 below, the Acquisition of Land Act 1981 shall apply to any compulsory purchase under subsection (1) above of any land by the [<sup>F224</sup>Agency]; and Schedule 3 to the said Act of 1981 shall apply to the compulsory acquisition under that subsection of rights by the creation of new rights.
  - (5) Schedule 18 to this Act shall have effect for the purpose of modifying enactments relating to compensation and the provisions of the <sup>M60</sup>Compulsory Purchase Act 1965 in their application in relation to the compulsory acquisition under subsection (1) above of a right over land by the creation of a new right.
  - (6) The provisions of Part I of the <sup>M61</sup>Compulsory Purchase Act 1965 (so far as applicable), other than sections 4 to 8, 10, 21, 27(1) and 31 and Schedule 4, shall apply in relation to any power to acquire land by agreement which is conferred, by virtue of any provision of this Act [<sup>F225</sup>or otherwise (including section 37 of the 1995 Act (incidental general powers of the Agency))], on the [Agency] as if—
    - (a) any reference in those provisions to the acquiring authority were a reference to the [<sup>F224</sup>Agency]; and
    - (b) any reference to land subject to compulsory purchase were a reference to land which may be purchased by agreement under that power.

#### Textual Amendments

**F224** Word in s. 154 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F225** Words in s. 154(6) substituted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 157** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M59** 1981 c. 67.

**M60** 1965 c. 56.

**M61** 1965 c. 56.

## 155 Accretions of land resulting from drainage works.

- (1) If the relevant Minister certifies that, as the result of—

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- (a) any drainage works carried out or improved, or proposed to be carried out or improved, by the [<sup>F226</sup>Agency] in connection with the tidal waters of a main river; or
- (b) any drainage works transferred from a drainage body to the [<sup>F226</sup>Agency] in pursuance of this Act or the <sup>M62</sup>Land Drainage Act 1991,

there has been or is likely to be any accretion of land, the powers of the [<sup>F226</sup>Agency] by virtue of this Act, for the purpose of carrying out its functions, to acquire land or any interest in or right over land by agreement or compulsorily shall include power so to acquire the land mentioned in subsection (2) below.

(2) The land mentioned in subsection (1) above is—

- (a) the accretion of land or the land to which the accretion will, if it takes place, be added, together with any right to reclaim or embank the accretion; and
- (b) such other land as is reasonably required for the purpose of reclamation of the accretion or for the enjoyment of it when reclaimed.

(3) An agreement or order with respect to the acquisition of any land or rights by virtue of this section may provide for the transfer to the [<sup>F226</sup>Agency] of any liability for the upkeep, maintenance and repair of any bank or drainage work or of any other like liability.

(4) Where the value of any land or right is increased by the carrying out or proposed carrying out of drainage works by the [<sup>F226</sup>Agency] the amount of the increase shall not be taken into account in assessing the compensation in respect of the compulsory acquisition of it.

(5) Where, by reason of a certificate having been given by the relevant Minister under this section in relation to any drainage works, the [Agency] has acquired any land or right and a grant has been made out of public moneys for defraying the cost or part of the cost of the carrying out of the works, the [<sup>F226</sup>Agency] shall—

- (a) on being so required by the Crown Estate Commissioners; and
- (b) on payment by the Commissioners to the [Agency] of the sum paid by the [<sup>F226</sup>Agency] in respect of the acquisition of the land or right, together with the amount of any costs incurred by the [<sup>F226</sup>Agency] in connection with the acquisition,

transfer the land or right to the Commissioners or to any person nominated by them.

(6) If the [<sup>F226</sup>Agency], on being so required by the Crown Estate Commissioners in pursuance of subsection (5) above, fail to transfer to the Commissioners any land or right, the relevant Minister may by a vesting order transfer the land or right to the Commissioners or to a person nominated by them; and, for the purposes of this subsection, the relevant Minister shall be deemed to be a competent authority within the meaning of section 9 of the <sup>M63</sup>Law of Property Act 1925.

(7) In this section—

“banks” has the same meaning as in Part IV of this Act;

“drainage body” has the same meaning as in section 108 above;

“the relevant Minister”—

- (a) in relation to England, means the Minister; and
- (b) in relation to Wales, means the Secretary of State.

*Status: Point in time view as at 01/04/2005.*

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#### Textual Amendments

**F226** Word in s. 155 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M62** 1991 c. 59.

**M63** 1925 c. 20.

### 156 Acquisition of land etc. for fisheries purposes.

- (1) [<sup>F227</sup>Without prejudice to section 37 of the 1995 Act (incidental general powers of the Agency)], the powers conferred on the [<sup>F228</sup>Agency] by that section and section 154 above include power to purchase or take on lease (either by agreement or, if so authorised, compulsorily)—
  - (a) any dam, fishing weir, fishing mill dam, fixed engine or other artificial obstruction and any fishery attached to or worked in connection with any such obstruction;
  - (b) so much of the bank adjoining a dam as may be necessary for making or maintaining a fish pass for the purposes of section 10 of the <sup>M64</sup>Salmon and Freshwater Fisheries Act 1975; and
  - (c) for the purpose of erecting and working a fixed engine, any fishery land or foreshore together with any easement over any adjoining land necessary for securing access to the fishery land or foreshore so acquired.
- (2) [<sup>F227</sup>Without prejudice to section 37 of the 1995 Act (incidental general powers of the Agency)], the may—
  - (a) either alter or remove an obstruction acquired in the exercise of the powers mentioned in subsection (1) above; or
  - (b) by itself or its lessees use or work in any lawful manner the obstruction for fishing purposes and exercise the right by any fishery so acquired,
 subject, in the case of an obstruction or fishery acquired by way of lease, to the terms of the lease.
- (3) Expressions used in this section and in the Salmon and Freshwater Fisheries Act 1975 have the same meanings in this section as in that Act.

#### Textual Amendments

**F227** Words in s. 156(1)(2) substituted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 158** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F228** Word in s. 156 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M64** 1975 c. 51.

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*Status: Point in time view as at 01/04/2005.*

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## **157 Restriction on disposals of compulsorily acquired land.**

- (1) The [<sup>F229</sup>Agency] shall not dispose of any of its compulsorily acquired land, or of any interest or right in or over any of that land, except with the consent of, or in accordance with a general authorisation given by, one of the Ministers.
- (2) A consent or authorisation for the purposes of this section—
  - (a) shall be set out in a notice served on the [<sup>F229</sup>Agency] by the Minister who is giving the consent or authorisation; and
  - (b) in the case of an authorisation, may be combined with an authorisation for the purposes of section 156 of the <sup>M65</sup>Water Industry Act 1991 (restrictions on disposals of land by a water or sewerage undertaker).
- (3) A consent or authorisation for the purposes of this section may be given on such conditions as the Minister who is giving it considers appropriate.
- (4) Without prejudice to the generality of subsection (3) above, the conditions of a consent or authorisation for the purposes of this section may include a requirement that, before there is any disposal, an opportunity of acquiring the land in question, or an interest or right in or over that land, is to be made available to such person as may be specified in or determined under provision contained in the notice setting out the consent or authorisation in question.
- (5) A requirement under subsection (4) above may require the opportunity to be made available in such manner and on such terms as may be specified in or determined under provision contained in the notice setting out the consent or authorisation in question.
- [<sup>F230</sup>(6) In this section “compulsorily acquired land”, in relation to the Agency, means any land of the Agency which—
  - (a) was acquired by the Agency compulsorily under the provisions of section 154 above or of an order under section 168 below;
  - (b) was acquired by the Agency at a time when it was authorised under those provisions to acquire the land compulsorily;
  - (c) being land which has been transferred to the Agency from the Authority by section 3 of the 1995 Act, was acquired by the Authority—
    - (i) compulsorily, under the provisions of section 154 above or of an order under section 168 below or under the provisions of section 151 of the <sup>M66</sup>Water Act 1989 or of an order under section 155 of that Act; or
    - (ii) at a time when it was authorised under those provisions to acquire the land compulsorily;
  - (d) being land—
    - (i) which has been so transferred, and
    - (ii) which was transferred to the Authority in accordance with a scheme under Schedule 2 to the <sup>M67</sup>Water Act 1989,was acquired by a predecessor of the Authority compulsorily under so much of any enactment in force at any time before 1st September 1989 as conferred powers of compulsory acquisition; or
  - (e) being land transferred as mentioned in sub-paragraphs (i) and (ii) of paragraph (d) above, was acquired by such a predecessor at a time when it was authorised to acquire the land by virtue of any such powers as are mentioned in that paragraph.]

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#### Textual Amendments

**F229** Words in s. 157 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F230** S. 157(6) substituted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 159** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M65** 1991 c. 56.

**M66** 1989 c. 15.

**M67** 1989 c. 29.

### *Works agreements for water resources purposes*

#### 158 Works agreements for water resources purposes.

- (1) Without prejudice to the generality of the powers of the [<sup>F231</sup>Agency] by virtue of [<sup>F232</sup>section 37 of the 1995 Act (incidental general powers of the Agency)] but subject to subsection (2) below, those powers shall include power to enter into an agreement with any water undertaker, with any sewerage undertaker, with any local authority or joint planning board, or with the owner or occupier of any land, with respect to any one or more of the following matters, that is to say—
  - (a) the carrying out by any party to the agreement of works which the [<sup>F231</sup>Agency] considers necessary or expedient in connection with the carrying out of any of the [<sup>F231</sup>Agency's] functions by virtue of Part II of this Act;
  - (b) the maintenance by any party to the agreement of works carried out in pursuance of the agreement;
  - (c) provision for the [<sup>F231</sup>Agency] to use, or have access to, any land for any purpose connected with the carrying out of any of those functions;
  - (d) the manner in which any reservoir is to be operated.
- (2) The Secretary of State may by a direction to the [Agency] direct that, in such cases or classes of cases as are specified in the direction, the [<sup>F231</sup>Agency] shall not enter into any such agreement as is mentioned in subsection (1) above except with his consent.
- (3) An agreement such as is mentioned in subsection (1) above may contain such incidental and consequential provisions (including provisions of a financial character) as appear to the [<sup>F231</sup>Agency] necessary or expedient for the purposes of the agreement.
- (4) Where an agreement such as is mentioned in subsection (1) above is made with an owner of land, other than registered land, and the agreement provides that the provisions of this subsection shall have effect in relation to the agreement—
  - (a) the agreement may be registered as a land charge under the <sup>M68</sup>Land Charges Act 1972 as if it were a charge affecting land falling within paragraph (iii) of Class D;
  - (b) the provisions of section 4 of that Act (which relates to the effect of non-registration) shall apply as if the agreement were such a land charge; and
  - (c) subject to the provisions of section 4 of that Act, the agreement shall be binding upon any successor of that owner to the same extent as it is binding upon that owner, notwithstanding that it would not have been binding upon that successor apart from the provisions of this paragraph.

*Status: Point in time view as at 01/04/2005.*

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- (5) Where an agreement such as is mentioned in subsection (1) above is made with an owner of land which is registered land, and the agreement provides that the provisions of this subsection shall have effect in relation to the agreement—
- [<sup>F233</sup>(a) the agreement may be the subject of a notice in the register of title under the Land Registration Act 2002 as if it were an interest affecting the registered land;
- (b) the provisions of sections 28 to 30 of that Act (effect of dispositions of registered land on priority of adverse interests) shall apply as if the agreement were such an interest;]
- (c) [<sup>F234</sup>subject to the provisions of those sections,] the agreement shall be binding upon any successor of that owner to the same extent as it is binding upon that owner, notwithstanding that it would not have been binding upon that successor apart from the provisions of this paragraph.
- (6) In this section—
- “registered land” has the same meaning as in the [<sup>F235</sup>Land Registration Act 2002]; and
- “successor”, in relation to an agreement with the owner of any land, means a person deriving title or otherwise claiming under that owner, otherwise than in right of an interest or charge to which the interest of the owner was subject immediately before the following time, that is to say—
- (a) where the land is not registered land, the time when the agreement was made; and
- (b) where the land is registered land, the time when the notice of the agreement was registered.

#### Textual Amendments

- F231** Word in s. 158 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F232** Words in s. 158(1) substituted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 160** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F233** S. 158(5)(a)(b) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 25(2)(a)** (with s. 129); S.I. 2003/1725, **art. 2(1)**
- F234** Words in s. 158(5)(c) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 25(2)(b)** (with s. 129); S.I. 2003/1725, **art. 2(1)**
- F235** Words in s. 158(6) substituted (13.10.2003) by Land Registration Act 2002 (c. 9), s. 136(2), **Sch. 11 para. 25(3)** (with s. 129); S.I. 2003/1725, **art. 2(1)**

#### Modifications etc. (not altering text)

- C82** S. 158(1) applied (with modifications) (4.6.1996) by S.I. 1996/1243, **art. 18**, **Sch. 5 para. 6(2)(b)**

#### Marginal Citations

- M68** 1972 c. 61.

*Status: Point in time view as at 01/04/2005.*

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### *General pipe-laying powers*

#### **159 Powers to lay pipes in streets.**

- (1) Subject to the following provisions of this Part, the [<sup>F236</sup>Agency] shall, for the purpose of carrying out its functions, have power—
  - (a) to lay a relevant pipe in, under or over any street and to keep that pipe there;
  - (b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in, under or over any street; and
  - (c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above, including for those purposes the following kinds of works, that is to say—
    - (i) breaking up or opening a street;
    - (ii) tunnelling or boring under a street;
    - (iii) breaking up or opening a sewer, drain or tunnel;
    - (iv) moving or removing earth and other materials.
- (2) Without prejudice to the generality of subsection (1)(c) above, the [<sup>F236</sup>Agency] shall have power to erect and keep in any street notices indicating the position of such underground accessories for its relevant pipes as may be used for controlling the flow of water in those pipes.
- (3) The power conferred by subsection (2) above shall include power to attach any such notice as is mentioned in that subsection to any building, fence or other structure which is comprised in premises abutting on the street in question.
- (4) Until the coming into force of its repeal by the <sup>M69</sup>New Roads and Street Works Act 1991 section 20 of the <sup>M70</sup>Highways Act 1980 (works in special roads) shall have effect as if the reference in that section to a power under any enactment to lay down or erect apparatus included a reference to any power to lay any pipe which is conferred by this section.
- (5) In this section references to a relevant pipe are references to a resource main or discharge pipe and references to laying such a pipe shall include references—
  - (a) to the laying of any drain or sewer for any of the purposes specified in subsection (6) below; and
  - (b) to the construction of a watercourse for any of those purposes.
- (6) The purposes mentioned in subsection (5) above are—
  - (a) intercepting, treating or disposing of any foul water arising or flowing upon any land; or
  - (b) otherwise preventing the pollution—
    - (i) of any waters, whether on the surface or underground, which belong to the [<sup>F236</sup>Agency] or any water undertaker or from which the [<sup>F236</sup>Agency] or any water undertaker is authorised to take water;
    - (ii) without prejudice to sub-paragraph (i) above, of any reservoir which belongs to or is operated by the [<sup>F236</sup>Agency] or any water undertaker or which the [<sup>F236</sup>Agency] or any water undertaker is proposing to acquire or construct for the purpose of being so operated; or
    - (iii) of any underground strata from which the [<sup>F236</sup>Agency] or any water undertaker is for the time being authorised to abstract water in pursuance of a licence under Chapter II of Part II of this Act.

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- (7) References in this section to maintaining a pipe include references to cleansing it and references to altering a pipe include references to altering its size or course, to moving or removing it and to replacing it with a pipe which is of the same description of relevant pipe as the pipe replaced.

#### Textual Amendments

**F236** Word in s. 159 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M69** 1991 c. 22.

**M70** 1980 c. 66.

### 160 Power to lay pipes in other land.

- (1) Subject to the following provisions of this Part, the [<sup>F237</sup>Agency] shall, for the purpose of carrying out its functions, have power—
- (a) to lay a relevant pipe (whether above or below the surface) in any land which is not in, under or over a street and to keep that pipe there;
  - (b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in any such land;
  - (c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above.
- (2) The powers conferred by this section shall be exercisable only after reasonable notice of the proposed exercise of the power has been given to the owner and to the occupier of the land where the power is to be exercised.
- (3) Subject to subsection (4) below, in relation to any exercise of the powers conferred by this section for the purpose of laying or altering a relevant pipe, the minimum period that is capable of constituting reasonable notice for the purposes of subsection (2) above shall be deemed—
- (a) where the power is exercised for the purpose of laying a relevant pipe otherwise than in substitution for an existing pipe of the same description, to be three months; and
  - (b) where the power is exercised for the purpose of altering an existing pipe, to be forty-two days.
- (4) In this section references to a relevant pipe are references to a resource main or discharge pipe; and subsection (7) of section 159 above shall apply for the purposes of this section as it applies for the purposes of that section.

#### Textual Amendments

**F237** Word in s. 160 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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### *Anti-pollution works*

#### **161 Anti-pollution works and operations.**

(1) [<sup>F238</sup>Subject to subsections (1A) and (2) below] where it appears to the [<sup>F239</sup>Agency] that any poisonous, noxious or polluting matter or any solid waste matter is likely to enter, or to be or to have been present in, any controlled waters, the [<sup>F239</sup>Agency] shall be entitled to carry out the following works and operations, that is to say—

- (a) in a case where the matter appears likely to enter any controlled waters, works and operations for the purpose of preventing it from doing so; or
- (b) in a case where the matter appears to be or to have been present in any controlled waters, works and operations for the purpose—
  - (i) of removing or disposing of the matter;
  - (ii) of remedying or mitigating any pollution caused by its presence in the waters; or
  - (iii) so far as it is reasonably practicable to do so, of restoring the waters, including any flora and fauna dependent on the aquatic environment of the waters, to their state immediately before the matter became present in the waters.

[<sup>F240</sup>and, in either case, the Agency shall be entitled to carry out investigations for the purpose of establishing the source of the matter and the identity of the person who has caused or knowingly permitted it to be present in controlled waters or at a place from which it was likely, in the opinion of the Agency, to enter controlled waters.]

[<sup>F241</sup>(1A) Without prejudice to the power of the Agency to carry out investigations under subsection (1) above, the power conferred by that subsection to carry out works and operations shall only be exercisable in a case where—

- (a) the Agency considers it necessary to carry out forthwith any works or operations falling within paragraph (a) or (b) of that subsection; or
- (b) it appears to the Agency, after reasonable inquiry, that no person can be found on whom to serve a works notice under section 161A below.]

(2) Nothing in subsection (1) above shall entitle the [<sup>F239</sup>Agency] to impede or prevent the making of any discharge in pursuance of a consent given under Chapter II of Part III of this Act.

(3) Where the [<sup>F239</sup>Agency] carries out any such works [<sup>F242</sup>operations or investigations] as are mentioned in subsection (1) above, it shall, subject to subsection (4) below, be entitled to recover the expenses reasonably incurred in doing so from any person who, as the case may be—

- (a) caused or knowingly permitted the matter in question to be present at the place from which it was likely, in the opinion of the [<sup>F239</sup>Agency], to enter any controlled waters; or
- (b) caused or knowingly permitted the matter in question to be present in any controlled waters.

(4) No such expenses shall be recoverable from a person for any works [<sup>F243</sup>operations or investigations] in respect of water from an abandoned mine [<sup>F244</sup>or an abandoned part of a mine] which that person permitted to reach such a place as is mentioned in subsection (3) above or to enter any controlled waters.

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[<sup>F245</sup>(4A) Subsection (4) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.

(4B) Subsections (3B) and (3C) of section 89 above shall apply in relation to subsections (4) and (4A) above as they apply in relation to subsections (3) and (3A) of that section.]

(5) Nothing in this section—

- (a) derogates from any right of action or other remedy (whether civil or criminal) in proceedings instituted otherwise than under this section; or
- (b) affects any restriction imposed by or under any other enactment, whether public, local or private.

(6) In this section—

“controlled waters” has the same meaning as in Part III of this Act; and

[<sup>F246</sup>“expenses” includes costs;]

“mine” has the same meaning as in the <sup>M71</sup>Mines and Quarries Act 1954.

#### Textual Amendments

**F238** Words in s. 161(1) substituted (29.4.1999) by 1995 c. 25, s. 120, **Sch. 22 para. 161(2)** (with ss. 7(6), 115, 117); S.I. 1999/1301, **art. 2**

**F239** Word in s. 161 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F240** Words in s. 161(1) inserted (1.7.1997) by 1995 c. 25, s. 60(3) (with ss. 7(6), 115, 117); S.I. 1997/1626, **art. 2** (with transitional provisions in **art. 3**)

**F241** S. 161(1A) inserted (29.4.1999) by 1995 c. 25, s. 120, **Sch. 22 para. 161(3)** (with ss. 7(6), 115, 117); S.I. 1999/1301, **art. 2**

**F242** Words in s. 161(3) substituted (1.7.1997) by 1995 c. 25, s. 60(4) (with ss. 7(6), 115, 117); S.I. 1997/1626, **art. 2** (with transitional provisions in **art. 3**)

**F243** Words in s. 161(4) substituted (1.7.1997) by 1995 c. 25, s. 60(5)(a) (with ss. 7(6), 115, 117); S.I. 1997/1626, **art. 2** (with transitional provisions in **art. 3**)

**F244** Words in s. 161(4) inserted (1.7.1998) by 1995 c. 25, s. 60(5)(b) (with ss. 7(6), 115, 117); S.I. 1998/604, **art. 3**

**F245** S. 161(4A)(4B) inserted (1.7.1998) by 1995 c. 25, s. 60(6) (with ss. 7(6), 115, 117); S.I. 1998/604, **art. 3**

**F246** Definition of “expenses” in s. 161(6) inserted (1.7.1997) by 1995 c. 25, s. 60(7) (with ss. 7(6), 115, 117); S.I. 1997/1626, **art. 2** (with transitional provisions in **art. 3**)

#### Modifications etc. (not altering text)

**C83** S. 161 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).

s. 161 applied (with modifications) (21.7.1994) by 1994 c. xiii, s. 14

ss. 161-161D modified (1.2.1996) by 1995 c. 25, s. 5(5)(g) (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 2**

#### Marginal Citations

**M71** 1954 c. 70.

*Status: Point in time view as at 01/04/2005.*

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**[<sup>F247</sup>161A] Notices requiring persons to carry out anti-pollution works and operations.**

- (1) Subject to the following provisions of this section, where it appears to the Agency that any poisonous, noxious or polluting matter or any solid waste matter is likely to enter, or to be or to have been present in, any controlled waters, the Agency shall be entitled to serve a works notice on any person who, as the case may be,—
  - (a) caused or knowingly permitted the matter in question to be present at the place from which it is likely, in the opinion of the Agency, to enter any controlled waters; or
  - (b) caused or knowingly permitted the matter in question to be present in any controlled waters.
- (2) For the purposes of this section, a “works notice” is a notice requiring the person on whom it is served to carry out such of the following works or operations as may be specified in the notice, that is to say—
  - (a) in a case where the matter in question appears likely to enter any controlled waters, works or operations for the purpose of preventing it from doing so; or
  - (b) in a case where the matter appears to be or to have been present in any controlled waters, works or operations for the purpose—
    - (i) of removing or disposing of the matter;
    - (ii) of remedying or mitigating any pollution caused by its presence in the waters; or
    - (iii) so far as it is reasonably practicable to do so, of restoring the waters, including any flora and fauna dependent on the aquatic environment of the waters, to their state immediately before the matter became present in the waters.
- (3) A works notice—
  - (a) must specify the periods within which the person on whom it is served is required to do each of the things specified in the notice; and
  - (b) is without prejudice to the powers of the Agency by virtue of section 161(1A) (a) above.
- (4) Before serving a works notice on any person, the Agency shall reasonably endeavour to consult that person concerning the works or operations which are to be specified in the notice.
- (5) The Secretary of State may by regulations make provision for or in connection with—
  - (a) the form or content of works notices;
  - (b) requirements for consultation, before the service of a works notice, with persons other than the person on whom that notice is to be served;
  - (c) steps to be taken for the purposes of any consultation required under subsection (4) above or regulations made by virtue of paragraph (b) above; or
  - (d) any other steps of a procedural nature which are to be taken in connection with, or in consequence of, the service of a works notice.
- (6) A works notice shall not be regarded as invalid, or as invalidly served, by reason only of any failure to comply with the requirements of subsection (4) above or of regulations made by virtue of paragraph (b) of subsection (5) above.
- (7) Nothing in subsection (1) above shall entitle the Agency to require the carrying out of any works or operations which would impede or prevent the making of any discharge in pursuance of a consent given under Chapter II of Part III of this Act.

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- (8) No works notice shall be served on any person requiring him to carry out any works or operations in respect of water from an abandoned mine or an abandoned part of a mine which that person permitted to reach such a place as is mentioned in subsection (1)(a) above or to enter any controlled waters.
- (9) Subsection (8) above shall not apply to the owner or former operator of any mine or part of a mine if the mine or part in question became abandoned after 31st December 1999.
- (10) Subsections (3B) and (3C) of section 89 above shall apply in relation to subsections (8) and (9) above as they apply in relation to subsections (3) and (3A) of that section.
- (11) Where the Agency—
  - (a) carries out any such investigations as are mentioned in section 161(1) above, and
  - (b) serves a works notice on a person in connection with the matter to which the investigations relate,it shall (unless the notice is quashed or withdrawn) be entitled to recover the costs or expenses reasonably incurred in carrying out those investigations from that person.
- (12) The Secretary of State may, if he thinks fit in relation to any person, give directions to the Agency as to whether or how it should exercise its powers under this section.
- (13) In this section—

“controlled waters” has the same meaning as in Part III of this Act;  
“mine” has the same meaning as in the <sup>M72</sup>Mines and Quarries Act 1954.]

#### Textual Amendments

**F247** Ss. 161A-161D inserted (21.9.1995 for specified purposes, 16.3.1999 for other specified purposes and otherwise 29.4.1999) by 1995 c. 25, s. 120, **Sch. 22 para. 162** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 1999/803, **art. 2**; S.I. 1999/1301, **art. 2**

#### Marginal Citations

**M72** 1954 c. 70.

#### **F248** 161B Grant of, and compensation for, rights of entry etc.

- (1) A works notice may require a person to carry out works or operations in relation to any land or waters notwithstanding that he is not entitled to carry out those works or operations.
- (2) Any person whose consent is required before any works or operations required by a works notice may be carried out shall grant, or join in granting, such rights in relation to any land or waters as will enable the person on whom the works notice is served to comply with any requirements imposed by the works notice.
- (3) Before serving a works notice, the Agency shall reasonably endeavour to consult every person who appears to it—
  - (a) to be the owner or occupier of any relevant land, and
  - (b) to be a person who might be required by subsection (2) above to grant, or join in granting, any rights,

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concerning the rights which that person may be so required to grant.

- (4) A works notice shall not be regarded as invalid, or as invalidly served, by reason only of any failure to comply with the requirements of subsection (3) above.
- (5) A person who grants, or joins in granting, any rights pursuant to subsection (2) above shall be entitled, on making an application within such period as may be prescribed and in such manner as may be prescribed to such person as may be prescribed, to be paid by the person on whom the works notice in question is served compensation of such amount as may be determined in such manner as may be prescribed.
- (6) Without prejudice to the generality of the regulations that may be made by virtue of subsection (5) above, regulations by virtue of that subsection may make such provision in relation to compensation under this section as may be made by regulations by virtue of subsection (4) of section 35A of the <sup>M73</sup>Environmental Protection Act 1990 in relation to compensation under that section.
- (7) In this section—
  - “prescribed” means prescribed in regulations made by the Secretary of State;
  - “relevant land” means—
    - (a) any land or waters in relation to which the works notice in question requires, or may require, works or operations to be carried out; or
    - (b) any land adjoining or adjacent to that land or those waters;
  - “works notice” means a works notice under section 161A above.

#### Textual Amendments

**F248** *Ss. 161A-161D* inserted (21.9.1995 for specified purposes, 16.3.1999 for other specified purposes and otherwise 29.4.1999) by 1995 c. 25, s. 120, **Sch. 22 para. 162** (with ss. 7(6), 115, 117); S.I. 1995/1983, art. 3; S.I. 1999/803, art. 2; S.I. 1999/1301, art. 2

#### Marginal Citations

**M73** 1990 c. 43.

### <sup>F249</sup>161C Appeals against works notices.

- (1) A person on whom a works notice is served may, within the period of twenty-one days beginning with the day on which the notice is served, appeal against the notice to the Secretary of State.
- (2) On any appeal under this section the Secretary of State—
  - (a) shall quash the notice, if he is satisfied that there is a material defect in the notice; but
  - (b) subject to that, may confirm the notice, with or without modification, or quash it.
- (3) The Secretary of State may by regulations make provision with respect to—
  - (a) the grounds on which appeals under this section may be made; or
  - (b) the procedure on any such appeal.
- (4) Regulations under subsection (3) above may (among other things)—

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- (a) include provisions comparable to those in section 290 of the <sup>M74</sup>Public Health Act 1936 (appeals against notices requiring the execution of works);
  - (b) prescribe the cases in which a works notice is, or is not, to be suspended until the appeal is decided, or until some other stage in the proceedings;
  - (c) prescribe the cases in which the decision on an appeal may in some respects be less favourable to the appellant than the works notice against which he is appealing;
  - (d) prescribe the cases in which the appellant may claim that a works notice should have been served on some other person and prescribe the procedure to be followed in those cases;
  - (e) make provision as respects—
    - (i) the particulars to be included in the notice of appeal;
    - (ii) the persons on whom notice of appeal is to be served and the particulars, if any, which are to accompany the notice; or
    - (iii) the abandonment of an appeal.
- (5) In this section “works notice” means a works notice under section 161A above.
- (6) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals).

#### Textual Amendments

**F249** [Ss. 161A-161D](#) inserted (21.9.1995 for specified purposes, 16.3.1999 for other specified purposes and otherwise 29.4.1999) by [1995 c. 25, s. 120](#), [Sch. 22 para. 162](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1995/1983, art. 3](#); [S.I. 1999/803, art. 2](#); [S.I. 1999/1301, art. 2](#)

#### Modifications etc. (not altering text)

**C84** [S. 161C](#): power to delegate functions conferred (1.4.1996) by [1995 c. 25, s. 114\(2\)\(a\)\(v\)](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186, art. 3](#)

#### Marginal Citations

**M74** [1936 c. 49](#).

### <sup>F250</sup>**161D**Consequences of not complying with a works notice.

- (1) If a person on whom the Agency serves a works notice fails to comply with any of the requirements of the notice, he shall be guilty of an offence.
- (2) A person who commits an offence under subsection (1) above shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding £20,000 or to both;
  - (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or to both.
- (3) If a person on whom a works notice has been served fails to comply with any of the requirements of the notice, the Agency may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by the Agency in doing it.
- (4) If the Agency is of the opinion that proceedings for an offence under subsection (1) above would afford an ineffectual remedy against a person who has failed to comply

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with the requirements of a works notice, the Agency may take proceedings in the High Court for the purpose of securing compliance with the notice.

(5) In this section “works notice” means a works notice under section 161A above.

#### Textual Amendments

**F250** Ss. 161A-161D inserted (21.9.1995 for specified purposes, 16.3.1999 for other specified purposes and otherwise 29.4.1999) by 1995 c. 25, s. 120, **Sch. 22 para. 162** (with ss. 7(6), 115, 117); S.I. 1995/1983, **art. 3**; S.I. 1999/803, **art. 2**; S.I. 1999/1301, **art. 2**

### 162 Other powers to deal with foul water and pollution.

(1) Without prejudice to the powers conferred by [F251 sections 161 to 161D] above and subsections (2) and (3) below, the [F252 Agency] shall have power, on any land—

- (a) which belongs to the [F252 Agency]; or
- (b) over or in which the [F252 Agency] has acquired the necessary easements or rights,

to construct and maintain drains, sewers, watercourses, catchpits and other works for the purpose of intercepting, treating or disposing of any foul water arising or flowing on that land or of otherwise preventing any such pollution as is mentioned in section 159(6)(b) above.

(2) Subject to the following provisions of this Part, the [F252 Agency] shall, for the purpose of carrying out its functions, have power—

- (a) to carry out in a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and
- (b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) above, including for those purposes the following kinds of works, that is to say—
  - (i) breaking up or opening a street;
  - (ii) tunnelling or boring under a street;
  - (iii) breaking up or opening a sewer, drain or tunnel;
  - (iv) moving or removing earth and other materials;

and the provisions of section 159 above shall, so far as applicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.

(3) Subject to the following provisions of this Part, the [F252 Agency] shall, for the purpose of carrying out its functions, have power—

- (a) to carry out on any land which is not in, under or over a street all such works as are requisite for securing that the water in any relevant waterworks is not polluted or otherwise contaminated; and
- (b) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) above;

and the provisions of section 160 above shall, so far as applicable, have effect in relation to the powers conferred by this subsection as they have effect in relation to the powers conferred by subsection (1) of that section.

(4) Without prejudice to the provisions of sections 178 to 184 below, nothing in subsection (1) above shall authorise the [F252 Agency], without the consent of the

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navigation authority in question, to intercept or take any water which a navigation authority are authorised to take or use for the purposes of their undertaking.

- (5) Any dispute as to whether any consent for the purposes of subsection (4) above is being unreasonably withheld shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

- (6) In this section—

“relevant waterworks” means any waterworks which contain water which is or may be used by a water undertaker for providing a supply of water to any premises;

“service pipe” and “water main” have the same meanings as in the <sup>M75</sup>Water Industry Act 1991;

“waterworks” includes any water main, resource main, service pipe or discharge pipe and any spring, well, adit, borehole, service reservoir or tank.

#### Textual Amendments

**F251** Words in s. 162(1) substituted (29.4.1999) by 1995 c. 25, s. 120, **Sch. 22 para. 163** (with ss. 7(6), 115, 117); S.I. 1999/1301, **art. 2**

**F252** Word in s.162 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M75** 1991 c. 56.

### *Powers to discharge water*

## **163 Discharges for works purposes.**

- (1) Subject to the following provisions of this section and to section 164 below, where the [<sup>F253</sup>Agency]—

- (a) is carrying out, or is about to carry out, the construction, alteration, repair, cleaning, or examination of any reservoir, well, borehole or other work belonging to or used by the [<sup>F253</sup>Agency] for the purposes of, or in connection with, the carrying out of any of its functions; or
- (b) is exercising or about to exercise any power conferred by section 159, 160 or 162(2) or (3) above,

the [<sup>F253</sup>Agency] may cause the water in any relevant pipe or in any such reservoir, well, borehole or other work to be discharged into any available watercourse.

- (2) Nothing in this section shall authorise any discharge which—

- (a) damages or injuriously affects the works or property of any railway company or navigation authority; or
- (b) floods or damages any highway.

- (3) If the [<sup>F253</sup>Agency] fails to take all necessary steps to secure that any water discharged by it under this section is as free as may be reasonably practicable from—

- (a) mud and silt;
- (b) solid, polluting, offensive or injurious substances; and

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- (c) any substances prejudicial to fish or spawn, or to spawning beds or food of fish,

it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

- (4) In this section—

“railway company” means the British Railways Board, [<sup>F254</sup>Transport for London or any subsidiary (within the meaning of the Greater London Authority Act 1999) of Transport for London,] or any other person authorised by any enactment, or by any order, rule or regulation made under any enactment, to construct, work or carry on a railway; and

“relevant pipe” has the same meaning as in section 159 above.

#### Textual Amendments

**F253** Words in s. 163 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F254** Words in s. 163(4) substituted (15.7.2003) by The Transport for London (Consequential Provisions) Order 2003 (S.I. 2003/1615), **art. 1(1), Sch. 1 para. 16(2)**

#### 164 Consents for certain discharges under section 163.

- (1) Except in an emergency, no discharge through any pipe the diameter of which exceeds two hundred and twenty-nine millimetres shall be made under section 163 above except with such consent as may be prescribed.
- (2) Where the [<sup>F255</sup>Agency] makes an application to any person for a consent for the purposes of this section—
  - (a) that application shall be accompanied or supplemented by all such information as that person may reasonably require; and
  - (b) the [<sup>F255</sup>Agency] shall serve a copy of the application, and of any consent given on that application, on every person who—
    - (i) is registered with the [<sup>F255</sup>Agency] in respect of any premises which are within three miles of the place where the discharge to which the application relates is proposed to be made and are not upstream from that place; and
    - (ii) has not agreed in writing that he need not be served with such a copy;
 but, subject to subsection (4) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.
- (3) Subject to subsection (4) below, an application for a consent for the purposes of this section shall be determined—
  - (a) in the case of an application with respect to a particular discharge, before the end of the period of seven days beginning with the day after the application is made; and
  - (b) in any other case, before the end of the period of three months beginning with that day;

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and, subject to that subsection, where an application for any consent is required to be determined within the period specified in paragraph (a) above and is not so determined, the consent applied for shall be deemed to have been given unconditionally.

(4) Where—

- (a) the [Agency], having made an application to any person for a consent for the purposes of this section, has failed to comply with its obligation under subsection (2)(a) above to supplement that application with information required by that person; and
- (b) that requirement was made by that person at such a time before the end of the period within which he is required to determine the application as gave the [<sup>F255</sup>Agency] a reasonable opportunity to provide the required information within that period,

that person may delay his determination of the application until a reasonable time after the required information is provided.

- (5) A consent for the purposes of this section may relate to a particular discharge or to discharges of a particular description and may be made subject to such reasonable conditions as may be specified by the person giving it; but a consent for those purposes shall not be unreasonably withheld.
- (6) Any dispute as to whether a consent for the purposes of this section should be given or withheld, or as to whether the conditions to which any such consent is made subject are reasonable, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.
- (7) Where any discharge under section 163 above is made in an emergency without the consent which, if there were no emergency, would be required by virtue of this section, the [<sup>F255</sup>Agency] shall, as soon as practicable after making the discharge, serve a notice which—
  - (a) states that the discharge has been made; and
  - (b) gives such particulars of the discharge and of the emergency as the persons served with the notice might reasonably require,on every person on whom the [<sup>F255</sup>Agency] would have been required to serve the application for that consent or any copy of that application.
- (8) If the [<sup>F255</sup>Agency] contravenes, without reasonable excuse, any of the requirements of this section or any condition of a consent given for the purposes of this section, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (9) Nothing in this section shall require any consent to be obtained, or any notice to be served, in respect of any discharge if the requirements of section 34 of the <sup>M76</sup>Water Act 1945 (temporary discharges into watercourses) in relation to that discharge had been satisfied before 1st September 1989.

#### Textual Amendments

**F255** Words in s. 164 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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#### **Marginal Citations**

**M76** 1945 c. 42.

### *Flood defence and drainage works*

#### **165 General powers to carry out flood defence and drainage works.**

- (1) The [<sup>F256</sup>Agency] shall have power, in connection with a main river—
  - (a) to maintain existing works, that is to say, to cleanse, repair or otherwise maintain in a due state of efficiency any existing watercourse or any drainage work;
  - (b) to improve any existing works, that is to say, to deepen, widen, straighten or otherwise improve any existing watercourse or remove or alter mill dams, weirs or other obstructions to watercourses, or raise, widen or otherwise improve any existing drainage work;
  - (c) to construct new works, that is to say, to make any new watercourse or drainage work or erect any machinery or do any other act (other than an act referred to in paragraph (a) or (b) above) required for the drainage of any land.
- (2) The [<sup>F256</sup>Agency] shall also have power, irrespective of whether the works are in connection with a main river, to maintain, improve or construct drainage works for the purpose of defence against sea water or tidal water; and that power shall be exercisable both above and below the low-water mark.
- (3) The [<sup>F256</sup>Agency] may construct all such works and do all such things in the sea or in any estuary as may, in its opinion, be necessary to secure an adequate outfall for a main river.
- [<sup>F257</sup>(4) The Agency may by agreement with any person carry out, improve or maintain, at that person's expense, any drainage works which that person is entitled to carry out, improve or maintain; but for the purposes of this subsection the expense to be borne by that person shall not include such part (if any) of the amount of any grant made under section 47 of the Environment Act 1995 (grants to the new Agencies) as the Agency decides (subject to any terms on which the grant is made) to allocate for the works in question.]
- (5) The [<sup>F256</sup>Agency] may enter into an agreement with any local authority or with any navigation authority for the carrying out by that authority, on such terms as to payment or otherwise as may be specified in the agreement, of any work in connection with a main river which the [<sup>F256</sup>Agency] is authorised to carry out.
- (6) Nothing in subsections (1) to (3) above authorises any person to enter on the land of any person except for the purpose of maintaining existing works.
- (7) In this section “watercourse” has the same meaning as in Part IV of this Act; and subsections (2) and (3) of section 113 above shall apply for the purposes of determining any question arising under this section as to—
  - (a) whether any work is a drainage work in connection with a main river; or
  - (b) whether any proposed work will, if constructed, be such a drainage work, as they apply for the purposes of that Part.

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#### Textual Amendments

**F256** Words in s. 165 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F257** S. 165(4) substituted (17.3.2004 for E., 1.4.2004 for W.) by **Water Act 2003 (c. 37)**, **ss. 69(2)**, 105(3); S.I. 2004/641, **art. 2(a)** (with **Sch. 3 para. 7**); S.I. 2004/910, **art. 2(1)(b)**

#### Modifications etc. (not altering text)

**C85** S. 165 excluded (01.12.1991) by **Land Drainage Act 1991 (c. 59, SIF 73:1)**, **ss. 11(2)**, 76(2).

**C86** S. 165(1)(a)(b) explained (16.3.1992) by **Avon Weir Act 1992 (c. v)**, **s. 7(4)** (with s. 61)

### 166 Power to carry out works for purpose of providing flood warning system.

- (1) Without prejudice to its other powers by virtue of [<sup>F258</sup>section 37 of the 1995 Act (incidental general powers of the Agency)], Part IV of this Act and this Part, the [<sup>F259</sup>Agency] shall have power—
- (a) to provide and operate flood warning systems;
  - (b) to provide, install and maintain apparatus required for the purposes of such systems;
  - (c) to carry out any other engineering or building operations so required.
- (2) Subsection (1) above shall not be construed as authorising, on the part of the [<sup>F259</sup>Agency], any act or omission which, apart from that subsection, would be actionable at the suit of any person on any grounds other than a limitation imposed by law on the capacity of the [<sup>F259</sup>Agency] by virtue of its constitution.
- (3) The [<sup>F259</sup>Agency] may exercise the powers conferred by subsection (1)(b) or (c) above in an area in Scotland as if—
- (a) its functions in relation to the areas of the regional flood defence committees whose areas are adjacent to Scotland were functions in relation to that area in Scotland; and
  - (b) that area in Scotland were included in the areas of each of those committees;
- but the powers conferred by this subsection are subject (except in the case of a power to maintain apparatus) to prior consultation with the local authority (within the meaning of section 1 of the <sup>M77</sup>Flood Prevention (Scotland) Act 1961) for the area in Scotland in question.

[<sup>F260</sup>(4) In this section—

“flood warning system” means any system whereby, for the purpose of providing warning of any danger of flooding, information with respect to—

- (a) rainfall, as measured at a particular place within a particular period; or
  - (b) the level or flow of any inland water, or part of an inland water, at a particular time; or
  - (c) other matters appearing to the Agency to be relevant for that purpose,
- is obtained and transmitted, whether automatically or otherwise, with or without provision for carrying out calculations based on such information and for transmitting the results of those calculations;

“inland water” means any of the following in any part of Great Britain, that is to say—

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- (a) any river, stream or other watercourse, whether natural or artificial and whether tidal or not;
- (b) any lake or pond, whether natural or artificial, and any reservoir or dock; and
- (c) any channel, creek, bay, estuary or arm of the sea;

“rainfall” includes any fall of snow, hail or sleet.]

#### Textual Amendments

**F258** Words in s. 166(1) substituted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 164** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F259** Words in s. 166 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F260** S. 166(4) substituted (17.3.2004 for E., 1.4.2004 for W.) by Water Act 2003 (c. 37), **ss. 69(3), 105(3)**; S.I. 2004/641, **art. 2(a)** (with **Sch. 3 para. 7**); S.I. 2004/910, **art. 2(1)(b)**

#### Marginal Citations

**M77** 1961 c. 41.

### 167 Power to dispose of spoil in connection with flood defence works.

- (1) Subject to subsection (2) below, the [<sup>F261</sup>Agency] may—
  - (a) without making payment for it, appropriate and dispose of any matter removed in the course of the carrying out of any work for widening, deepening or dredging any watercourse; and
  - (b) deposit any matter so removed on the banks of the watercourse, or on such width of land adjoining the watercourse as is sufficient to enable the matter in question to be removed and deposited by mechanical means in one operation.
- (2) Subsection (1) above shall not authorise the deposit of any matter if the matter deposited would constitute a statutory nuisance within the meaning of Part III of the <sup>M78</sup>Environmental Protection Act 1990.
- (3) The [<sup>F261</sup>Agency] and the council of any district or London borough [<sup>F262</sup> or Welsh county or county borough] may enter into an agreement providing—
  - (a) for the disposal by the council of any matter removed as mentioned in subsection (1) above; and
  - (b) for the payment by the [<sup>F261</sup>Agency] to the council, in respect of the disposal of the matter by the council, of such sum as may be provided by the agreement.
- (4) In this section “banks” and “watercourse” have the same meanings as in Part IV of this Act.

#### Textual Amendments

**F261** Words in s.167 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F262** Words in s. 167(3) inserted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 para. 3(4)** (with ss. 54(4)(7), 55(5), **Sch. 17 paras. 22(1), 23(2)**); S.I. 1996/396, **art. 3, Sch. 1**

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## Marginal Citations

M78 1990 c. 43.

### Compulsory works orders

#### 168 Compulsory works orders.

- (1) Where the [<sup>F263</sup>Agency] is proposing, for the purposes of, or in connection with, the carrying out of any of its functions—
  - (a) to carry out any engineering or building operations; or
  - (b) to discharge water into any inland waters or underground strata,the [<sup>F263</sup>Agency] may apply to either of the Ministers for an order under this section (“a compulsory works order”).
- (2) Subject to the following provisions of this section, the Ministers shall each have power, on an application under subsection (1) above, by order made by statutory instrument—
  - (a) to confer such compulsory powers; and
  - (b) to grant such authority,as he considers necessary or expedient for the purpose of enabling any engineering or building operations or discharges of water to be carried out or made for the purposes of, or in connection with, the carrying out of the functions with respect to which the application was made.
- (3) Schedule 19 to this Act shall have effect with respect to applications for compulsory works orders and with respect to such orders.
- (4) Subject to the provisions of Schedule 19 to this Act, a compulsory works order may—
  - (a) without prejudice to section 154 above, confer power to acquire compulsorily any land, including—
    - (i) power to acquire interests in and rights over land by the creation of new rights and interests; and
    - (ii) power, by the compulsory acquisition by the [<sup>F263</sup>Agency] of any rights over land which is to be or has been acquired by the [<sup>F263</sup>Agency], to extinguish any such rights;
  - (b) apply for the purposes of the order, either with or without modifications, any of the relevant provisions of this Part which do not apply for those purposes apart from by virtue of this paragraph;
  - (c) make any authority granted by the order subject to such conditions as may be specified in the order;
  - (d) amend or repeal any local statutory provision;
  - (e) contain such supplemental, consequential and transitional provision as the Minister making the order considers appropriate;and section 156(1) above shall apply in relation to the powers conferred by virtue of this section as it applies in relation to the power conferred by section 154 above.
- (5) Without prejudice to any duty imposed by virtue of section 184 below, where—
  - (a) either of the Ministers makes a compulsory works order authorising the [<sup>F263</sup>Agency] to carry out works for or in connection with the construction or operation of a reservoir or conferring compulsory powers for that purpose on the [<sup>F263</sup>Agency]; and

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- (b) it appears to him that the works to be carried out may permanently affect the area in which they are situated and are not primarily intended to benefit the inhabitants of that area,
- he may include in the order provision with respect to facilities for recreation or other leisure-time occupation for the benefit of those inhabitants.
- (6) Nothing in any compulsory works order shall exempt the [F263 Agency] from any restriction imposed by Chapter II of Part II of this Act.
- (7) It is hereby declared that a compulsory works order may grant authority for discharges of water by the [F263 Agency] where the [F263 Agency] has no power to take water, or to require discharges to be made, from the inland waters or other source from which the discharges authorised by the order are intended to be made; but nothing in so much of any such order as grants authority for any discharges of water shall have the effect of conferring any such power.
- (8) In this section the reference to the relevant provisions of this Part is a reference to the provisions of this Part except sections 155 to 158 and 165 to 167 above.

#### Textual Amendments

**F263** Words in s. 168 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

## CHAPTER II

### POWERS OF ENTRY

#### 169 Powers of entry for enforcement purposes.

- (1) Any person designated in writing for the purpose by either of the Ministers or by the [F264 Agency] may—
- (a) enter any premises or vessel for the purpose of ascertaining whether any provision of an enactment to which this section applies, of any subordinate legislation or other instrument made by virtue of any such enactment or of any byelaws made by the [F264 Agency] is being or has been contravened; and
  - (b) carry out such inspections, measurements and tests on any premises or vessel entered by that person or of any articles found on any such premises or vessel, and take away such samples of water or effluent or of any land or articles, as that Minister or the [F264 Agency]—
    - (i) considers appropriate for the purpose mentioned in paragraph (a) above; and
    - (ii) has authorised that person to carry out or take away.
- [F265](2) The powers conferred by subsection (1) above in relation to any premises shall include power, in order to obtain information for the purpose mentioned in subsection (1)(a) above—
- (a) to carry out experimental borings or other works on those premises; and
  - (b) to install and keep monitoring and other apparatus there.]

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- (3) [<sup>F266</sup>Subject to subsection (4) below,]this section applies to any enactment contained in this Act and to any other enactment under or for the purposes of which the [<sup>F264</sup>Agency] carries out functions.

- <sup>F267</sup>[(4) The powers conferred by this section shall not have effect for the purposes of any of the Agency's pollution control functions, within the meaning of section 108 of the 1995 Act.]

#### Textual Amendments

**F264** Words in s. 169 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F265** S. 169(2) substituted (1.4.2004) by Water Act 2003 (c. 37), **ss. 71, 105(3)**; S.I. 2004/641, **art. 3(r)** (with **Sch. 3 paras. 67**)

**F266** Words in s. 169(3) inserted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 165** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F267** S. 169(4) added (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 165** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### 170 Power of entry for certain works purposes.

- (1) Any person designated in writing for the purpose by the [<sup>F268</sup>Agency] may enter any premises for any of the purposes specified in subsection (2) below.
- (2) The purposes mentioned in subsection (1) above are—
- (a) the carrying out of any survey or tests for the purpose of determining—
    - (i) whether it is appropriate and practicable for the [Agency] to exercise any relevant works power; or
    - (ii) how any such power should be exercised;
  - (b) the exercise of any such power.
- (3) The power by virtue of subsection (1) above of a person designated by the [<sup>F268</sup>Agency] to enter any premises for the purposes of carrying out any survey or tests shall include power—
- (a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil; and
  - (b) to take away and analyse such samples of water or effluent or of any land or articles as the [Agency] considers necessary for the purpose of determining either of the matters mentioned in subsection (2)(a) above and has authorised that person to take away and analyse.
- (4) In this section “relevant works power” means any power conferred by any of the provisions of sections 159, 160, 162(2) and (3) and 163 above.

#### Textual Amendments

**F268** Words in s. 170 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 171 Power to carry out surveys and to search for water.

- (1) Without prejudice to the rights and powers conferred by the other provisions of this Chapter, any person designated in writing under this section by the [F269Agency] may enter any premises for any of the purposes specified in subsection (2) below.
- (2) The purposes mentioned in subsection (1) above are the carrying out of any survey or tests for the purpose of determining—
  - (a) whether it would be appropriate for the [F269Agency] to acquire any land, or any interest or right in or over land, for purposes connected with the carrying out of its functions; or
  - (b) whether it would be appropriate for the [F269Agency] to apply for an order under section 168 above and what compulsory powers it would be appropriate to apply for under that section.
- (3) The power by virtue of subsection (1) above of a person designated under this section to enter any premises for the purpose of carrying out any survey or tests shall include power—
  - (a) to carry out experimental borings or other works for the purpose of ascertaining the nature of the sub-soil, the presence of underground water in the sub-soil or the quantity or quality of any such water;
  - (b) to install and keep monitoring or other apparatus on the premises for the purpose of obtaining the information on which any such determination as is mentioned in subsection (2) above may be made; and
  - (c) to take away and analyse such samples of water or of any land or articles as the [F269Agency] considers necessary for any of the purposes so mentioned and has authorised that person to take away and analyse.
- (4) The powers conferred by this section shall not be exercised in any case for purposes connected with the determination of—
  - (a) whether, where or how a reservoir should be constructed; or
  - (b) whether, where or how a borehole should be sunk for the purpose of abstracting water from or discharging water into any underground strata,
 unless the Secretary of State has, in accordance with subsection (5) below, given his written authorisation in relation to that case for the exercise of those powers for those purposes.
- (5) The Secretary of State shall not give his authorisation for the purposes of subsection (4) above unless—
  - (a) he is satisfied that notice of the proposal to apply for the authorisation has been given to the owner and to the occupier of the premises in question; and
  - (b) he has considered any representation or objections with respect to the proposed exercise of the powers under this section which—
    - (i) have been duly made to him by the owner or occupier of those premises, within the period of fourteen days beginning with the day after the giving of the notice; and
    - (ii) have not been withdrawn.

### Textual Amendments

**F269** Words in s. 171 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

*Status: Point in time view as at 01/04/2005.*

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## 172 Powers of entry for other purposes.

- (1) Any person designated in writing for the purpose by either of the Ministers or the [F270 Agency] may enter any premises or vessel for the purpose of—
  - (a) determining whether, and if so in what manner, any power or duty conferred or imposed on either of the Ministers or on the [F270 Agency] by virtue of any enactment to which this section applies (including a power of either or both of the Ministers to make subordinate legislation) should be exercised or, as the case may be, performed; or
  - (b) exercising or performing any power or duty which is so conferred or imposed.
- (2) Any person designated in writing for the purpose by either of the Ministers or the [F270 Agency] may—
  - (a) carry out such inspections, measurements and tests on any premises or vessel entered by that person under this section or of any articles found on any such premises or vessel; and
  - (b) take away such samples of water or effluent or of any land or articles, as that Minister or the [F270 Agency] considers appropriate for any purpose mentioned in subsection (1) above and has authorised that person to carry out or take away.
- (3) [F271 Subject to subsection (3A) below,] the powers which by virtue of subsections (1) and (2) above are conferred in relation to any premises for the purpose of enabling either of the Ministers or the [F270 Agency] to determine whether or in what manner to exercise or perform any power or duty conferred or imposed on him or it by or under the water pollution provisions of this Act shall include power, in order to obtain the information on which that determination may be made—
  - (a) to carry out experimental borings or other works on those premises; and
  - (b) to install and keep monitoring and other apparatus there.
- [F272 (3A) The powers conferred by this section shall not have effect for the purposes of any of the Agency's pollution control functions, within the meaning of section 108 of the 1995 Act.]
- (4) This section applies to any enactment contained in this Act and to any other enactment under or for the purposes of which the [F270 Agency] carries out functions.

### Textual Amendments

- F270** Words in s. 172 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F271** Words in s. 172(3) inserted (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 166** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F272** S. 172(3A) added (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 166** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

## 173 Powers of entry: supplemental provisions.

Schedule 20 to this Act shall have effect with respect to the powers of entry and related powers which are conferred by the preceding provisions of this Chapter.

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

## 174 Impersonation of persons exercising powers of entry.

- (1) A person who, without having been designated or authorised for the purpose by the [<sup>F273</sup>Agency], purports to be entitled to enter any premises or vessel in exercise of a power exercisable in pursuance of any such designation or authorisation shall be guilty of an offence and [<sup>F274</sup>liable—].
  - [<sup>F274</sup>(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.]
- (2) For the purposes of this section it shall be immaterial, where a person purports to be entitled to enter any premises or vessel, that the power which that person purports to be entitled to exercise does not exist, or would not be exercisable, even if that person had been designated or authorised by the [<sup>F273</sup>Agency].

### Textual Amendments

- F273** Words in s.174 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F274** S. 174(1)(a)(b) and the word preceding them substituted (1.4.1996) for words by 1995 c. 25, s. 120, **Sch. 22 para. 167** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

## CHAPTER III

### PROVISIONS SUPPLEMENTAL TO LAND AND WORK POWERS

#### *Vesting of pipes in the [<sup>F275</sup>Agency]*

### Textual Amendments

- F275** Word in s. 175 cross-heading substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

## 175 Vesting of pipes in the [<sup>F276</sup>Agency].

- (1) Subject to any provision to the contrary contained in an agreement between the [<sup>F276</sup>Agency] and the person in whom an interest in the pipe is or is to be vested, every pipe which—
  - (a) is a relevant pipe for the purposes of section 159 or 160 above; and
  - (b) has been laid, in exercise of any power conferred by Chapter I of this Part or otherwise, by the [<sup>F276</sup>Agency],
 shall vest in the [<sup>F276</sup>Agency].
- (2) Subsection (1) above is without prejudice to the vesting of anything in the [<sup>F276</sup>Agency] by virtue of the exercise by the [<sup>F276</sup>Agency] of any power to acquire property by agreement or compulsorily.

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### Textual Amendments

**F276** Word in [s. 175](#) and the sidenote substituted (subject to the other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120](#), [Sch. 22 para. 128](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186, art. 3](#)

### *Offence of interference with works etc.*

## 176 Offence of interference with works etc.

- (1) Subject to subsection (2) below, if any person without the consent of the [<sup>F277</sup>Agency]—
  - (a) intentionally or recklessly interferes with any resource main or other pipe vested in the [<sup>F277</sup>Agency] or with any structure, installation or apparatus belonging to the [<sup>F277</sup>Agency]; or
  - (b) by any act or omission negligently interferes with any such main or other pipe or with any such structure, installation or apparatus so as to damage it or so as to have an effect on its use or operation,that person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (2) A person shall not be guilty of an offence under subsection (1) above—
  - (a) by reason of anything done in an emergency to prevent loss or damage to persons or property; or
  - (b) by reason of his opening or closing the stopcock fitted to a service pipe by means of which water is supplied to any premises by a water undertaker if—
    - (i) he has obtained the consent of every consumer whose supply is affected by the opening or closing of that stopcock or, as the case may be, of every other consumer whose supply is so affected; and
    - (ii) in the case of opening a stopcock, the stopcock was closed otherwise than by the undertaker.
- (3) Any person who without the consent of the [<sup>F277</sup>Agency]—
  - (a) attaches any pipe or apparatus to any resource main or other pipe vested in the [<sup>F277</sup>Agency]; or
  - (b) subject to subsection (4) below, uses any pipe or apparatus which has been attached or altered in contravention of this section,shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (4) In proceedings against any person for an offence by virtue of paragraph (b) of subsection (3) above it shall be a defence for that person to show that he did not know, and had no grounds for suspecting, that the pipe or apparatus in question had been attached or altered as mentioned in that subsection.
- (5) An offence under subsection (1) or (3) above shall constitute a breach of a duty owed to the [<sup>F277</sup>Agency]; and any such breach of duty which causes the [<sup>F277</sup>Agency] to sustain loss or damage shall be actionable at the suit of the [<sup>F277</sup>Agency].
- (6) The amount recoverable by virtue of subsection (5) above from a person who has committed an offence under subsection (3) above shall include such amount as may

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be reasonable in respect of any water wasted, misused or improperly consumed in consequence of the commission of the offence.

- (7) In this section “service pipe” and “stopcock” have the same meanings as in the <sup>M79</sup>Water Industry Act 1991, and “consumer” has the same meaning as in Part III of that Act.

#### Textual Amendments

**F277** Words in s. 176 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M79** 1991 c. 56.

### *Compensation etc. in respect of exercise of works powers*

#### **177 Compensation etc. in respect of exercise of works powers.**

Schedule 21 to this Act shall have effect for making provision for imposing obligations as to the payment of compensation in respect of the exercise of the powers conferred on the [<sup>F278</sup>Agency] by sections 159 to 167 above and otherwise for minimising the damage caused by the exercise of those powers.

#### Textual Amendments

**F278** Word in s. 177 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### *Protective provisions*

#### **178 Protection for particular undertakings.**

Schedule 22 to this Act shall have effect for the protection of particular undertakings in connection with the carrying out of works and other activities by the [<sup>F279</sup>Agency].

#### Textual Amendments

**F279** Word in s. 178 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### **179 Protective provisions in respect of flood defence works and watercourses etc.**

- (1) Nothing in this Act shall confer power on any person to do anything, except with the consent of the person who so uses them, which interferes—
- (a) with any sluices, floodgates, groynes, sea defences or other works used by any person for draining, preserving or improving any land under any local statutory provision; or
  - (b) with any such works used by any person for irrigating any land.

*Status: Point in time view as at 01/04/2005.*

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- (2) Where the [<sup>F280</sup>Agency] proposes, otherwise than in exercise of any compulsory powers—
- (a) to construct or alter any such inland waters in any internal drainage district as do not form part of a main river; or
  - (b) to construct or alter any works on or in any such inland waters,
- the [<sup>F280</sup>Agency] shall consult the internal drainage board for that district before doing so.
- (3) A consent for the purposes of subsection (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (4) Any dispute—
- (a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in subsection (1) above;
  - (b) as to whether any consent for the purposes of this section is being unreasonably withheld; or
  - (c) as to whether any condition subject to which any such consent has been given was reasonable,
- shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.
- (5) The provisions of this section shall be without prejudice to the provisions of Schedule 22 to this Act.

#### Textual Amendments

**F280** Words in s. 179 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Modifications etc. (not altering text)

**C87** S. 179 applied (01.12.1991) by **Land Drainage Act 1991** (c. 59, SIF 73:1), **ss. 67(2), 76(2)**.

## 180 Power of navigation authorities etc to divert the Authority's watercourses.

- (1) Where any watercourses under the control of the [<sup>F281</sup>Agency] pass under or interfere with, or with the improvement or alteration of, any river, canal, dock, harbour, basin or other work (including any towing-path adjacent thereto) which belongs to or is under the jurisdiction of any relevant authority, the relevant authority may, at their own expense and on substituting for those watercourses other equally effective watercourses—
- (a) take up, divert or alter the level of those watercourses; and
  - (b) do all such matters and things as may be necessary in connection with the works authorised to be done by them under this section.
- (2) If any question arises under this section between the [<sup>F281</sup>Agency] and any relevant authority as to whether any watercourses substituted or proposed to be substituted by the relevant authority for any existing watercourses are as effective as the existing watercourses, that question shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers on the application of either party.

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(3) In this section—

“relevant authority” means any navigation authority, harbour authority or conservancy authority; and

“watercourse” has the same meaning as in Part IV of this Act.

#### Textual Amendments

**F281** Words in s.180 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### 181 Works in tidal lands etc.

- (1) Nothing in any of the provisions of this Part relating to any relevant works power shall authorise the [<sup>F282</sup>Agency] to carry out any works at any place below the place to which the tide flows at mean high water springs, except in accordance with such plans and sections, and subject to such restrictions, as may, before the works are commenced, have been approved by the Secretary of State.
- (2) An approval for the purposes of subsection (1) above shall be given to the [<sup>F282</sup>Agency] by the service on the [<sup>F282</sup>Agency] of a notice containing the approval.
- (3) Section 38 of the <sup>M80</sup>Salmon and Freshwater Fisheries Act 1975 (tidal lands etc.) shall apply to any proposed construction, alteration or extension under section 156 above as it applies to any proposed construction, alteration or extension under that Act.
- (4) Section 74 of the <sup>M81</sup>Land Drainage Act 1991 (application to Crown and tidal lands), so far as it relates to lands below the high-water mark of ordinary spring tides shall apply, as it applies in relation to that Act, to the flood defence provisions of this Act.
- (5) In subsection (1) above the reference to a relevant works power is a reference to a power conferred by any of sections 159, 160, 162(2) and (3) and 163 above.

#### Textual Amendments

**F282** Words in s. 181 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M80** 1975 c. 51.

**M81** 1991 c. 59.

### 182 Mineral rights.

Schedule 23 to this Act (which makes provision with respect to the acquisition of mineral rights by the [<sup>F283</sup>Agency] and with respect to the working of mines and minerals where pipes, sewers or other related works are affected) shall have effect and, in the case of the compulsory acquisition of land by virtue of this Act, shall have effect instead of Schedule 2 to the <sup>M82</sup>Acquisition of Land Act 1981 (mineral rights etc. in relation to compulsory purchase orders).

*Status: Point in time view as at 01/04/2005.*

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#### Textual Amendments

**F283** Word in [s. 182](#) substituted (subject to the other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 128](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186, art. 3](#)

#### Marginal Citations

**M82** [1981 c. 67.](#)

### 183 Saving for planning controls etc.

- (1) Without prejudice to the operation of section 90 of the <sup>M83</sup>Town and Country Planning Act 1990 (planning permission deemed to be granted in certain cases) in relation to any provision made by or under this Act or any other enactment which by virtue of this Act or the <sup>M84</sup>Water Act 1989 relates to the functions of the [<sup>F284</sup>Agency], nothing in this Act or in any such enactment shall be construed as authorising the carrying out of any development (within the meaning of that Act of 1990) without the grant of such planning permission as may be required by that Act of 1990.
- (2) Nothing in the flood defence provisions of this Act shall authorise any person to carry out any works or do anything in contravention of any of the provisions of the <sup>M85</sup>Ancient Monuments and Archaeological Areas Act 1979.

#### Textual Amendments

**F284** Word in [s. 183](#) substituted (subject to the other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120, Sch. 22 para. 128](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186, art. 3](#)

#### Modifications etc. (not altering text)

**C88** [S. 183](#) applied (01.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\), ss. 67\(2\), 76\(2\).](#)

#### Marginal Citations

**M83** [1990 c. 8.](#)

**M84** [1989 c. 15.](#)

**M85** [1979 c. 46.](#)

### 184 Duties to make recreational facilities available when building reservoirs in Wales.

- (1) Where the [<sup>F285</sup>Agency] carries out any works for or in connection with the construction or operation of a reservoir in Wales which—
  - (a) permanently affect one or more communities; and
  - (b) are not primarily intended by the [<sup>F285</sup>Agency] to benefit the inhabitants of that or those communities,it shall be the duty of the [<sup>F285</sup>Agency] to make available facilities for recreation or other leisure-time occupation for the benefit of those inhabitants or to assist others to make such facilities available.
- (2) It shall be the duty of the [<sup>F285</sup>Agency], in performing its duty under subsection (1) above, to consult—

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- (a) the community councils of the communities affected, in the case of communities having such councils; and
- (b) in any case, the council of any [<sup>F286</sup>county or county borough] in which any community affected is situated.

#### Textual Amendments

**F285** Words in s. 184 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**F286** Words in s. 184(2)(b) substituted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11**, para. 3(5) (with ss. 54(4) (7), 55(5), Sch. 17 paras. 22(1), 23(2)); S.I. 1996/396, art. 3, **Sch. 1**

#### *Savings in respect of existing drainage obligations*

### **185 Savings in respect of existing drainage obligations.**

- (1) Nothing in the flood defence provisions of this Act shall operate to release any person from an obligation to which section 21 of the <sup>M86</sup>Land Drainage Act 1991 applies.
- (2) The functions of the [<sup>F287</sup>Agency] as respects the doing of any work under the flood defence provisions of this Act are not to be treated as in any way limited by the fact that some other person is under an obligation, by reason of tenure, custom, prescription or otherwise, to do that work.

#### Textual Amendments

**F287** Word in s. 185 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### Marginal Citations

**M86** 1991 c. 59.

#### *Interpretation of Part VII*

### **186 Interpretation of Part VII.**

- (1) In this Part—
  - “discharge pipe” means a pipe from which discharges are or are to be made under section 163 above;
  - “resource main” means any pipe, not being a trunk main within the meaning of the <sup>M87</sup>Water Industry Act 1991, which is or is to be used for the purpose of—
    - (a) conveying water from one source of supply to another, from a source of supply to a regulating reservoir or from a regulating reservoir to a source of supply; or
    - (b) giving or taking a supply of water in bulk.
- (2) In subsection (1) above—
  - “source of supply” shall be construed without reference to the definition of that expression in section 221 below; and

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“supply of water in bulk” has the same meaning as in section 3 above.

(3) The powers conferred by Chapter I of this Part shall be without prejudice to the powers conferred on the [<sup>F288</sup>Agency] by any other enactment or by any agreement.

**Textual Amendments**

**F288** Word in s. 186 substituted (subject to the other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**Marginal Citations**

**M87** 1991 c. 56.

**PART VIII**

**INFORMATION PROVISIONS**

*Annual report and publication of information*

<sup>F289</sup>**187** .....

**Textual Amendments**

**F289** S. 187 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 168**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

**188 Duty of [<sup>F290</sup>Agency] to publish certain information.**

It shall be the duty of the [<sup>F290</sup>Agency]—

- (a) to collate and publish information from which assessments can be made of the actual and prospective demand for water, and of actual and prospective water resources, in England and Wales; and
- (b) so far as it considers it appropriate to do so, to collaborate with others in collating and publishing any such information or any similar information in relation to places outside England and Wales.

**Textual Amendments**

**F290** Words in s. 188 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

### *Registers etc. to be kept by the [F291 Agency]*

#### Textual Amendments

**F291** Words in cross-heading substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with **art. 4**)

## 189 Register of abstraction and impounding licences.

- (1) The [F292 Agency] shall keep, in such manner as may be prescribed, registers containing such information as may be prescribed with respect—
  - (a) to applications made for the grant, revocation or variation of licences under Chapter II of Part II of this Act, including information as to the way in which such applications have been dealt with; and
  - (b) to persons becoming the holders of such licences by virtue of section 49 above of this Act or regulations made under section 50 above.
- (2) Every register kept by the [F292 Agency] under this section shall also contain such information as may be prescribed with respect—
  - (a) to applications made in accordance with regulations under section 64 above; and
  - (b) to licences granted or deemed to be granted, and licences revoked or varied, in accordance with regulations made under that section.
- (3) Subject to any regulations under this section, the information which the [F292 Agency] is required to keep in registers under this section shall continue to include the information which immediately before 1st September 1989 was contained in a register kept by a water authority under section 53 of the <sup>M88</sup>Water Resources Act 1963.
- (4) The contents of every register kept under this section shall be available, at such place as may be prescribed, for inspection by the public at all reasonable hours.

#### Textual Amendments

**F292** Words in s. 189 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with **art. 4**)

#### Modifications etc. (not altering text)

**C89** S. 189 modified (1.4.2005) by **The Water Act 2003 (Commencement No. 4, Transitional Provisions and Savings) Order 2005** (S.I. 2005/968), **art. 4(1)(3)**, **Sch. 1 paras. 7(10), 8(3), 9**

#### Marginal Citations

**M88** 1963 c. 38.

## 190 Pollution control register.

- (1) It shall be the duty of the [F293 Agency] to maintain, in accordance with regulations made by the Secretary of State, registers containing prescribed particulars of [F294 or relating to]—
  - (a) any notices of water quality objectives or other notices served under section 83 above;

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*Status: Point in time view as at 01/04/2005.*

**Changes to legislation:** *Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

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- (b) applications made for consents under Chapter II of Part III of this Act;
- (c) consents given under that Chapter and the conditions to which the consents are subject;

<sup>F295</sup>(d) .....

- (e) the following, that is to say—

- (i) samples of water or effluent taken by the [<sup>F293</sup>Agency] for the purposes of any of the water pollution provisions of this Act;
- (ii) information produced by analyses of those samples;
- (iii) such information with respect to samples of water or effluent taken by any other person, and the analyses of those samples, as is acquired by the [<sup>F293</sup>Agency] from any person under arrangements made by the [<sup>F293</sup>Agency] for the purposes of any of those provisions; and
- (iv) the steps taken in consequence of any such information as is mentioned in any of sub-paragraphs (i) to (iii) above;

<sup>F296</sup> ...

<sup>F296</sup>(f) .....

- <sup>F297</sup>(g) applications made to the Agency for the variation of discharge consents;
- (h) enforcement notices served under section 90B above;
- (j) revocations, under paragraph 7 of Schedule 10 to this Act, of discharge consents;
- (k) appeals under section 91 above;
- (l) directions given by the Secretary of State in relation to the Agency's functions under the water pollution provisions of this Act;
- (m) convictions, for offences under Part III of this Act, of persons who have the benefit of discharge consents;
- (n) information obtained or furnished in pursuance of conditions of discharge consents;
- (o) works notices under section 161A above;
- (p) appeals under section 161C above;
- (q) convictions for offences under section 161D above;
- (r) such other matters relating to the quality of water or the pollution of water as may be prescribed by the Secretary of State.

(1A) Where information of any description is excluded from any register by virtue of section 191B below, a statement shall be entered in the register indicating the existence of information of that description.]

(2) It shall be the duty of the [<sup>F293</sup>Agency]—

- (a) to secure that the contents of registers maintained by the [<sup>F293</sup>Agency] under this section are available, at all reasonable times, for inspection by the public free of charge; and
- (b) to afford members of the public reasonable facilities for obtaining from the [<sup>F293</sup>Agency], on payment of reasonable charges, copies of entries in any of the registers.

[<sup>F298</sup>and, for the purposes of this subsection, places may be prescribed by the Secretary of State at which any such registers or facilities as are mentioned in paragraph (a) or (b) above are to be available or afforded to the public in pursuance of the paragraph in question.]

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- (3) Section 101 above shall have effect in relation to any regulations under this section as it has effect in relation to any subordinate legislation under Part III of this Act.
- [<sup>F299</sup>(4) The Secretary of State may give to the Agency directions requiring the removal from any register maintained by it under this section of any specified information which is not prescribed for inclusion under subsection (1) above or which, by virtue of section 191A or 191B below, ought to have been excluded from the register.
- (5) In this section “discharge consent” has the same meaning as in section 91 above.]

#### Textual Amendments

- F293** Words in s. 190 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F294** Words in s. 190(1) inserted (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 169(2)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (subject to saving provisions in art. 4)
- F295** S. 190(1)(d) repealed (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 169(3)**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (subject to saving provisions in art. 4)
- F296** S. 190(1)(f) and word preceding it repealed (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 169(4)**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (subject to saving provisions in art. 4)
- F297** S. 190(1)(g)-(r)(1A) added (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 169(4)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (subject to saving provisions in art. 4)
- F298** Words in s. 190(2) added (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 169(5)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (subject to saving provisions in art. 4)
- F299** S. 190(4)(5) added (21.11.1996 for certain purposes and 31.12.1996 otherwise) by 1995 c. 25, s. 120(1), **Sch. 22 para. 169(6)** (with ss. 7(6), 115, 117); S.I. 1996/2909, **arts. 2, 3** (subject to saving provisions in art. 4)

#### Modifications etc. (not altering text)

- C90** S. 190 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).

### 191 Register for the purposes of works discharges.

- (1) The [<sup>F300</sup>Agency] shall keep a register of persons and premises for the purposes of section 164 above.
- (2) The [<sup>F300</sup>Agency] shall enter the name and address of a person in that register in respect of any premises which abut on any watercourse if that person has requested to be so registered and is either—
- (a) the owner or occupier of those premises; or
  - (b) an officer of an association of owners or occupiers of premises which abut on that watercourse and include those premises.
- (3) If the [<sup>F300</sup>Agency] contravenes, without reasonable excuse, any of the requirements of this section, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

*Status: Point in time view as at 01/04/2005.*

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#### Textual Amendments

**F300** Words in [s. 191](#) substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 128](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3](#) (with [art. 4](#))

#### [<sup>F301</sup>**191A**Exclusion from registers of information affecting national security.

- (1) No information shall be included in a register kept or maintained by the Agency under any provision of this Act if and so long as, in the opinion of the Secretary of State, the inclusion in such a register of that information, or information of that description, would be contrary to the interests of national security.
- (2) The Secretary of State may, for the purpose of securing the exclusion from registers of information to which subsection (1) above applies, give to the Agency directions—
  - (a) specifying information, or descriptions of information, to be excluded from their registers; or
  - (b) specifying descriptions of information to be referred to the Secretary of State for his determination;and no information referred to the Secretary of State in pursuance of paragraph (b) above shall be included in any such register until the Secretary of State determines that it should be so included.
- (3) The Agency shall notify the Secretary of State of any information it excludes from a register in pursuance of directions under subsection (2) above.
- (4) A person may, as respects any information which appears to him to be information to which subsection (1) above may apply, give a notice to the Secretary of State specifying the information and indicating its apparent nature; and, if he does so—
  - (a) he shall notify the Agency that he has done so; and
  - (b) no information so notified to the Secretary of State shall be included in any such register until the Secretary of State has determined that it should be so included.]

#### Textual Amendments

**F301** [S. 191A](#) inserted (21.11.1996 for certain purposes and 31.12.1996 otherwise) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 170](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/2909](#), [arts. 2, 3](#) (subject to saving provisions in [art. 4](#))

#### Modifications etc. (not altering text)

**C91** [S. 191A](#) applied (with modifications) (1.4.1999) by [S.I. 1998/2746](#), [reg. 14\(3\)](#)

#### [<sup>F302</sup>**191B**Exclusion from registers of certain confidential information.

- (1) No information relating to the affairs of any individual or business shall, without the consent of that individual or the person for the time being carrying on that business, be included in a register kept or maintained by the Agency under any provision of this Act, if and so long as the information—
  - (a) is, in relation to him, commercially confidential; and

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- (b) is not required to be included in the register in pursuance of directions under subsection (7) below;
- but information is not commercially confidential for the purposes of this section unless it is determined under this section to be so by the Agency or, on appeal, by the Secretary of State.
- (2) Where information is furnished to the Agency for the purpose of—
- (a) an application for a discharge consent or for the variation of a discharge consent,
  - (b) complying with any condition of a discharge consent, or
  - (c) complying with a notice under section 202 below,
- then, if the person furnishing it applies to the Agency to have the information excluded from any register kept or maintained by the Agency under any provision of this Act, on the ground that it is commercially confidential (as regards himself or another person), the Agency shall determine whether the information is or is not commercially confidential.
- (3) A determination under subsection (2) above must be made within the period of fourteen days beginning with the date of the application and if the Agency fails to make a determination within that period it shall be treated as having determined that the information is commercially confidential.
- (4) Where it appears to the Agency that any information (other than information furnished in circumstances within subsection (2) above) which has been obtained by the Agency under or by virtue of any provision of any enactment might be commercially confidential, the Agency shall—
- (a) give to the person to whom or whose business it relates notice that that information is required to be included in a register kept or maintained by the Agency under any provision of this Act, unless excluded under this section; and
  - (b) give him a reasonable opportunity—
    - (i) of objecting to the inclusion of the information on the ground that it is commercially confidential; and
    - (ii) of making representations to the Agency for the purpose of justifying any such objection;
- and, if any representations are made, the Agency shall, having taken the representations into account, determine whether the information is or is not commercially confidential.
- (5) Where, under subsection (2) or (4) above, the Agency determines that information is not commercially confidential—
- (a) the information shall not be entered on the register until the end of the period of twenty-one days beginning with the date on which the determination is notified to the person concerned; and
  - (b) that person may appeal to the Secretary of State against the decision;
- and, where an appeal is brought in respect of any information, the information shall not be entered on the register until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn.
- (6) Subsections (2A), (2C) and (2K) of section 91 above shall apply in relation to appeals under subsection (5) above; but—

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- (a) subsection (2C) of that section shall have effect for the purposes of this subsection with the substitution for the words from “(which may” onwards of the words “(which must be held in private)”; and
  - (b) subsection (5) above is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).
- (7) The Secretary of State may give to the Agency directions as to specified information, or descriptions of information, which the public interest requires to be included in registers kept or maintained by the Agency under any provision of this Act notwithstanding that the information may be commercially confidential.
- (8) Information excluded from a register shall be treated as ceasing to be commercially confidential for the purposes of this section at the expiry of the period of four years beginning with the date of the determination by virtue of which it was excluded; but the person who furnished it may apply to the Agency for the information to remain excluded from the register on the ground that it is still commercially confidential and the Agency shall determine whether or not that is the case.
- (9) Subsections (5) and (6) above shall apply in relation to a determination under subsection (8) above as they apply in relation to a determination under subsection (2) or (4) above.
- (10) The Secretary of State may by regulations substitute (whether in all cases or in such classes or descriptions of case as may be specified in the regulations) for the period for the time being specified in subsection (3) above such other period as he considers appropriate.
- (11) Information is, for the purposes of any determination under this section, commercially confidential, in relation to any individual or person, if its being contained in the register would prejudice to an unreasonable degree the commercial interests of that individual or person.
- (12) In this section “discharge consent” has the same meaning as in section 91 above.]

#### Textual Amendments

**F302** S. 191B inserted (21.11.1996 for certain purposes and 31.12.1996 otherwise) by [1995 c. 25, s. 120\(1\)](#), [Sch. 22 para. 170](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/2909](#), [arts. 2, 3](#) (subject to saving provisions in [art. 4](#))

#### Modifications etc. (not altering text)

**C92** S. 191B applied (with modifications) (1.4.1999) by [S.I. 1998/2746](#), [reg. 14\(3\)](#)

**C93** S. 191B(5): power to delegate functions conferred (1.4.1996) by [1995 c. 25, s. 114\(2\)\(a\)\(v\)](#) (with [ss. 7\(6\)](#), [115](#), [117](#)); [S.I. 1996/186](#), [art. 3](#) (with [art. 4](#))

## 192 Maps of fresh-water limits.

- (1) The Secretary of State—
- (a) shall deposit maps with the [<sup>F303</sup>Agency] showing what appear to him to be the fresh-water limits of every relevant river or watercourse; and
  - (b) may from time to time, if he considers it appropriate to do so by reason of any change of what appears to him to be the fresh-water limit of any

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river or watercourse, deposit a map showing a revised limit for that river or watercourse.

- (2) It shall be the duty of the [<sup>F303</sup>Agency] to keep any maps deposited with it under subsection (1) above available, at all reasonable times, for inspection by the public free of charge.
- (3) In this section “relevant river or watercourse” has the same meaning as in section 104 above.

#### Textual Amendments

**F303** Words in s. 192 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

### 193 Main river maps.

- (1) Subject to section 194 below, the [<sup>F304</sup>Agency] shall—
  - (a) keep the main river map for the area of a regional flood defence committee at the principal office of the [<sup>F304</sup>Agency] for that area; and
  - (b) provide reasonable facilities for inspecting that map and taking copies of and extracts from it;

and any local authority whose area is wholly or partly within the area of a regional flood defence committee shall, on application to the [<sup>F304</sup>Agency], be entitled to be furnished with copies of the main river map for the area of that committee on payment of such sum as may be agreed between the [<sup>F304</sup>Agency] and that local authority.

- (2) For the purposes of this Act a main river map is a map relating to the area of a regional flood defence committee which—
  - (a) shows by a distinctive colour the extent to which any watercourse in that area is to be treated as a main river, or part of a main river, for the purposes of this Act; and
  - (b) indicates (by a distinctive colour or otherwise) which (if any) of those watercourses are watercourses designated in a scheme made under section 137 above;

and, subject to section 194 below, references in this Act to a main river map, in relation to the area of a regional flood defence committee, include so much of any map as, by virtue of paragraph 38 of Schedule 26 to the Water Act 1989, has effect as such a map at the coming into force of this Act.

- (3) A main river map—
  - (a) shall be conclusive evidence for all purposes as to what is a main river; and
  - (b) shall be taken for the purposes of the <sup>M89</sup>Documentary Evidence Act 1868, as it applies to either of the Ministers, to be a document within the meaning of that Act and to have been issued by that Minister.
- (4) In this section and section 194 below “watercourse” has the same meaning as in Part IV of this Act.

*Status: Point in time view as at 01/04/2005.*

*Changes to legislation: Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### Textual Amendments

**F304** Words in s. 193 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### Marginal Citations

**M89** 1868 c. 37.

### 194 Amendment of main river maps.

- (1) Either of the Ministers may at any time send the [<sup>F305</sup>Agency] one or more new maps to be substituted for the whole or part of a main river map and containing a statement to that effect.
- (2) A statement contained in a map in pursuance of subsection (1) above shall specify the date on which the substitution is to take effect and the substitution shall take effect in accordance with the statement.
- (3) Where—
  - (a) the area of a regional flood defence committee is altered so as to affect any of the particulars shown on the main river map for that area; or
  - (b) one of the Ministers confirms a scheme under section 137 above; or
  - (c) the [<sup>F305</sup>Agency] applies to one of the Ministers for the variation of a main river map, so far as it shows the extent to which any watercourse is to be treated as a main river or part of a main river,the Ministers shall each be under a duty to ensure that such action as he considers appropriate is taken under subsection (4) below.
- (4) The action referred to in subsection (3) above is action by one of the Ministers—
  - (a) requiring the [<sup>F305</sup>Agency] to send him any part of the main river map in question, altering it and sending it back to the ; or
  - (b) preparing a new main river map and sending it to the [<sup>F305</sup>Agency]; or
  - (c) notifying the [<sup>F305</sup>Agency] that he does not intend to vary the main river map in question.
- (5) Before one of the Ministers alters a map or prepares a new map by virtue of subsection (3)(c) above, he shall—
  - (a) give notice of his intention to do so in such manner as he thinks best adapted for informing persons affected; and
  - (b) consider any objections made to him within the time and in the manner specified in that notice;and he may then alter or prepare the map either in accordance with the proposals contained in the notice or otherwise.

#### Textual Amendments

**F305** Words in s. 194 substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

*Status: Point in time view as at 01/04/2005.*

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#### Modifications etc. (not altering text)

**C94** S. 194(5) excluded (16.3.1992) by [Aire and Calder Navigation Act 1992 \(c. iv\), s. 15\(3\)](#)

### 195 Maps of waterworks.

- (1) Subject to subsections (4) and (5) below, it shall be the duty of the [<sup>F306</sup>Agency] to keep records of the location of—
  - (a) every resource main or discharge pipe which is for the time being vested in the [<sup>F306</sup>Agency]; and
  - (b) any other underground works which are for the time being vested in the [<sup>F306</sup>Agency].
- (2) It shall be the duty of the [<sup>F306</sup>Agency] to secure that the contents of any records for the time being kept by it under this section are available, at all reasonable times, for inspection by the public free of charge at an office of the [<sup>F306</sup>Agency].
- (3) Any information which is required under this section to be made available by the [<sup>F306</sup>Agency] for inspection by the public shall be so made available in the form of a map.
- (4) For the purpose of determining whether any failure to make a modification of any records kept under this section constitutes a breach of the duty imposed by subsection (1) above, that duty shall be taken to require any modification of the records to be made as soon as reasonably practicable after the completion of the works which make the modification necessary; and, where records kept under this section are modified, the date of the modification and of the completion of the works making the modification necessary shall be incorporated in the records.
- (5) Nothing in this section shall require the [<sup>F306</sup>Agency], at any time before 1st September 1999, to keep records of—
  - (a) any pipe which was laid before 1st September 1989; or
  - (b) any underground works which were completed before 1st September 1989,
 unless those particulars were shown on 31st August 1989 on a map kept by a water authority or statutory water company under section 12 of Schedule 3 to the <sup>M90</sup>Water Act 1945 (maps of underground works).
- (6) The reference in subsection (5) above to section 12 of Schedule 3 to the Water Act 1945 shall have effect, without prejudice to section 20(2) of the <sup>M91</sup>Interpretation Act 1978 (references to enactments to include references to enactments as amended, extended or applied), as including a reference to that section as applied, with or without modifications, by any local statutory provision.
- (7) In this section—
 

“discharge pipe” and “resource main” have the same meanings as in Part VII of this Act;

“underground works” does not include a service pipe within the meaning of the <sup>M92</sup>Water Industry Act 1991.

#### Textual Amendments

**F306** Words in s. 195 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120\(1\), Sch. 22 para. 128](#) (with [ss. 7\(6\), 115, 117](#)); [S.I. 1996/186, art. 3](#) (with [art. 4](#))

*Status: Point in time view as at 01/04/2005.*

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#### Marginal Citations

**M90** 1945 c. 42.

**M91** 1978 c. 30.

**M92** 1991 c. 56.

#### *Provision and acquisition of information etc.*

**F307** 196 .....

#### Textual Amendments

**F307** S. 196 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 171, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### **197**     **Provision of information about water flow etc.**

- (1) It shall be the duty of the [<sup>F308</sup>Agency]—
  - (a) to provide a water undertaker with all such information to which this section applies as is in the possession of the [<sup>F308</sup>Agency] and is reasonably requested by the undertaker for purposes connected with the carrying out of its functions; and
  - (b) to provide reasonable facilities to all persons—
    - (i) for the inspection of the contents of any records kept by the [<sup>F308</sup>Agency] and containing information to which this section applies; and
    - (ii) for the taking of copies of, or of extracts from, any such records.
- (2) It shall be the duty of every water undertaker to provide the [<sup>F308</sup>Agency] with all such information to which this section applies as is in the possession of the undertaker and is reasonably requested by the [<sup>F308</sup>Agency] for purposes connected with the carrying out of any of its functions.
- (3) Where records of the flow, level or volume of any inland waters, other than discrete waters, are kept by a person other than a water undertaker, the [<sup>F308</sup>Agency] shall have the right at all reasonable times—
  - (a) to inspect the contents of any of those records; and
  - (b) to take copies of, or of extracts from, the contents of any of those records;and any person who, without reasonable excuse, refuses or fails to permit the [<sup>F308</sup>Agency] to exercise its right under this subsection shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.
- (4) Information provided to a water undertaker or to the [<sup>F308</sup>Agency] under subsection (1) or (2) above shall be provided in such form and in such manner and at such times as the undertaker or, as the case may be, the [<sup>F308</sup>Agency] may reasonably require; and the duties of the [<sup>F308</sup>Agency] under subsection (1) above shall extend to information provided to or obtained by the [<sup>F308</sup>Agency] under subsection (2) or (3) above.
- (5) Information or facilities provided under subsection (1) or (2) above to the [<sup>F308</sup>Agency], to a water undertaker, to a local authority or joint planning board, or to an internal

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drainage board, shall be provided free of charge; and facilities provided under subsection (1) above to other persons may be provided on terms requiring the payment by persons making use of the facilities of such reasonable charges as the may determine.

- (6) The duties of a water undertaker under subsection (2) above shall be enforceable under section 18 of the <sup>M93</sup>Water Industry Act 1991 by the Secretary of State.
- (7) This section applies to information about the flow, level or volume of any inland waters or any water contained in underground strata, about rainfall or any fall of snow, hail or sleet or about the evaporation of any water.

#### Textual Amendments

**F308** Words in s. 197 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### Marginal Citations

**M93** 1991 c. 56.

## 198 Information about underground water.

- (1) Any person who, for the purpose of searching for or abstracting water, proposes to sink a well or borehole intended to reach a depth of more than fifty feet below the surface shall, before he begins to do so, give notice to the Natural Environment Research Council of his intention to do so.
- (2) Any person sinking any such well or borehole as is mentioned in subsection (1) above shall-
  - (a) keep a journal of the progress of the work and, on completion or abandonment of the work, send a complete copy of the journal to the Natural Environment Research Council;
  - (b) send to that Council particulars of any test made before completion or abandonment of the work of the flow of water;
  - (c) allow any person authorised by that Council for the purpose, on production of some duly authenticated document showing his authority, at all reasonable times to exercise any of the rights specified in subsection (5) below.
- (3) The journal required to be kept under this section shall include measurements of—
  - (a) the strata passed through; and
  - (b) the levels at which water is struck and subsequently rests.
- (4) The particulars required to be sent to the Natural Environment Research Council under subsection (2)(b) above shall specify—
  - (a) the rate of flow throughout the test;
  - (b) the duration of the test;
  - (c) where practicable, the water levels during the test and afterwards until the water returns to its natural level; and
  - (d) where the well or borehole is sunk in connection with an existing pumping station, the rate of pumping at the existing works during the test.

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- (5) The rights mentioned in subsection (2)(c) above are the rights, subject to section 205 below—
- (a) to have free access to the well or borehole;
  - (b) to inspect the well or borehole and the material extracted from it;
  - (c) to take specimens of any such material and of water abstracted from the well or borehole; and
  - (d) to inspect and take copies of or extracts from the journal required to be kept under this section.
- (6) Where the person sinking a well or borehole on any land is not the occupier of the land, the obligation imposed on that person by virtue of subsection (2)(c) above shall be the obligation of the occupier as well.
- (7) Where—
- (a) any person contracts to sink any well or borehole on land belonging to or occupied by another; and
  - (b) the carrying out of the work is under the control of the contractor,
- the contractor and no other person shall be deemed for the purposes of this section to be the person sinking the well or borehole.
- (8) Any person who fails to comply with any obligation imposed on him by this section shall be guilty of an offence and liable, on summary conviction—
- (a) to a fine not exceeding level 3 on the standard scale; and
  - (b) where the offence continues after conviction, to a further fine of £20 for every day during which it so continues.

## **199 Notice etc. of mining operations which may affect water conservation.**

- (1) Where a person proposes to construct or extend a boring for the purpose of searching for or extracting minerals, he shall, before he begins to construct or extend the boring, give to the [<sup>F309</sup>Agency] a notice of his intention in the prescribed form.
- (2) The provisions of subsections (2) and (3) of section 30 above and of section 31 above shall apply where a notice is served under subsection (1) above as they apply where a notice is served under subsection (1) of that section 30 but as if the references in subsection (3) of that section 30 and in subsection (1) of that section 31 to interference with the protection of the underground works in question were a reference to interference with the winning of minerals.
- (3) Sections 68 to 70 above shall apply for the purposes of subsection (2) above as they apply for the purposes of the provisions applied by that subsection.
- (4) Any person who contravenes subsection (1) above or fails to comply with a conservation notice given by virtue of subsection (2) above shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.

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#### Textual Amendments

**F309** Word in s. 199 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

### 200 Gauges and records kept by other persons.

- (1) Subject to subsection (3) below, any person other than the [<sup>F310</sup>Agency], who proposes to install a gauge for measuring and recording the flow, level or volume of any inland waters other than discrete waters—
  - (a) shall give notice to the [<sup>F310</sup>Agency] of his proposal to install the gauge; and
  - (b) shall not begin the work of installing it before the end of the period of three months beginning with the date of service of the notice or such shorter period as the [<sup>F310</sup>Agency] may in any particular case allow.
- (2) Not more than one month after any such work as is mentioned in paragraph (b) of subsection (1) above is completed, the person required to give notice under that subsection shall give notice to the [<sup>F310</sup>Agency] stating where the records obtained by means of the gauge are to be kept.
- (3) Subsections (1) and (2) above shall not apply—
  - (a) to any gauge installed for the sole purpose of indicating the level of any inland waters for the benefit of persons who fish in them; or
  - (b) to any gauge which is removed at or before the end of the period of twenty-eight days beginning with the date on which it is installed.
- (4) Any person who contravenes subsection (1) or (2) above shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 1 on the standard scale.

#### Textual Amendments

**F310** Words in s. 200 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

### [<sup>F311</sup>201 Power to require information in respect of water resources functions

- (1) Subject to subsection (2) below, the Secretary of State or the Agency may serve on any person a notice requiring that person to furnish him or, as the case may be, it, within a period or at times specified in the notice and in a form and manner so specified, with such information as is reasonably required by the Secretary of State or by the Agency for the purpose of carrying out any of his or, as the case may be, its water resources functions.
- (2) The Secretary of State shall have power by regulations to make provision for restricting the information which may be required under subsection (1) above and for determining the form in which the information is to be so required.
- (3) A person who fails without reasonable excuse to comply with the requirements of a notice served on him under this section shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;

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- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.
- (4) References in this section to the water resources functions of the Secretary of State or of the Agency are references to the functions of the Secretary of State or of the Agency under Part 2 of this Act or under any provisions not contained in that Part which are related water resources provisions in relation to Chapter 2 of that Part.]

#### Textual Amendments

**F311** S. 201 substituted (1.4.2005) by [Water Act 2003 \(c. 37\), ss. 70, 105\(3\)](#); S.I. 2005/968, art. 2(k)

## 202 Information and assistance required in connection with the control of pollution.

- (1) It shall be the duty of the [<sup>F312</sup>Agency], if and so far as it is requested to do so by either of the Ministers, to give him all such advice and assistance as appears to it to be appropriate for facilitating the carrying out by him of his functions under the water pollution provisions of this Act.
- (2) Subject to subsection (3) below, either of the Ministers or the [<sup>F312</sup>Agency] may serve on any person a notice requiring that person to furnish him or, as the case may be, it, within a period or at times specified in the notice and in a form and manner so specified, with such information as is reasonably required by the the Minister in question or by the [<sup>F312</sup>Agency] for the purpose of carrying out any of his or, as the case may be, its functions under the water pollution provisions of this Act.
- (3) Each of the Ministers shall have power by regulations to make provision for restricting the information which may be required under subsection (2) above and for determining the form in which the information is to be so required.
- (4) A person who fails without reasonable excuse to comply with the requirements of a notice served on him under this section shall be guilty of an offence and [<sup>F313</sup>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.]

<sup>F314</sup>(5) .....

#### Textual Amendments

**F312** Words in s. 202 substituted (subject to other provisions of the amending Act) (1.4.1996) by [1995 c. 25, s. 120\(1\), Sch. 22 para. 128](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#) (with art. 4)

**F313** Words in s. 202(4) substituted (1.4.1996) by [1995 c. 25, s. 120\(1\), Sch. 22 para. 172\(1\)](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#) (with art. 4)

**F314** S. 202(5) repealed (1.4.1996) by [1995 c. 25, s. 120\(1\)\(3\), Sch. 22 para. 172\(2\), Sch. 24](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#) (with art. 4)

#### Modifications etc. (not altering text)

**C95** S. 202 amended (27.8.1993) by [1993 c. 12, ss. 40, 51\(2\), Sch. 3 Pt. I para. 9](#) (with s. 46).

**C96** S. 202 modified (2.1.2004) by [The Water Environment \(Water Framework Directive\) \(England and Wales\) Regulations 2003 \(S.I. 2003/3242\)](#), regs. 1(a), [19\(2\)](#) (with reg. 1(c))

**C97** S. 202(2) modified (6.1.1997) by S.I. 1996/3001, [reg. 7\(3\)](#)

S. 202(2) modified (12.6.1997) by S.I. 1997/1331, [reg. 6\(3\)](#)

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S. 202(2) modified (12.6.1997) by S.I. 1997/1332, reg. 6(3)

### 203 Exchange of information with respect to pollution incidents etc.

- (1) It shall be the duty of the [<sup>F315</sup>Agency] to provide a water undertaker with all such information to which this section applies as is in the possession of the [<sup>F315</sup>Agency] and is reasonably requested by the undertaker for purposes connected with the carrying out of its functions.
- (2) It shall be the duty of every water undertaker to provide the [<sup>F315</sup>Agency] with all such information to which this section applies as is in the possession of the undertaker and is reasonably requested by the [<sup>F315</sup>Agency] for purposes connected with the carrying out of any of its functions.
- (3) Information provided to a water undertaker or to the [<sup>F315</sup>Agency] under subsection (1) or (2) above shall be provided in such form and in such manner and at such times as the undertaker or, as the case may be, the [<sup>F315</sup>Agency] may reasonably require.
- (4) Information provided under subsection (1) or (2) above to a water undertaker or to the [<sup>F315</sup>Agency] shall be provided free of charge.
- (5) The duties of a water undertaker under subsection (2) above shall be enforceable under section 18 of the <sup>M94</sup>Water Industry Act 1991 by the Secretary of State.
- (6) This section applies to information—
  - (a) about the quality of any controlled waters or of any other waters; or
  - (b) about any incident in which any poisonous, noxious or polluting matter or any solid waste matter has entered any controlled waters or other waters.
- (7) In this section “controlled waters” has the same meaning as in Part III of this Act.

#### Textual Amendments

**F315** Words in s. 203 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with **art. 4**)

#### Modifications etc. (not altering text)

**C98** S. 203 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).

#### Marginal Citations

**M94** 1991 c. 56.

### *Restriction on disclosure of information*

### 204 Restriction on disclosure of information.

- (1) Subject to the following provisions of this section, no information with respect to any particular business which—
  - (a) has been obtained by virtue of any of the provisions of this Act; and
  - (b) relates to the affairs of any individual or to any particular business,

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shall, during the lifetime of that individual or so long as that business continues to be carried on, be disclosed without the consent of that individual or the person for the time being carrying on that business.

(2) Subsection (1) above does not apply to any disclosure of information which is made—

- (a) for the purpose of facilitating the carrying out by either of the Ministers, [<sup>F316</sup>the Agency, the Scottish Environmental Protection Agency], the Director General of Water Services, the [<sup>F317</sup>Competition Commission] or a local authority of any of his, its or, as the case may be, their functions by virtue of this Act, any of the other consolidation Acts [<sup>F318</sup>, the Water Act 1989, Part I or IIA of the Environmental Protection Act 1990]<sup>F319</sup>, the 1995 Act<sup>F320</sup>, regulations under section 2 of the Pollution Prevention and Control Act 1999, or the Water Act 2003]]];
- (b) for the purpose of facilitating the performance by a water undertaker or sewerage undertaker of any of the duties imposed on it by or under this Act, any of the other consolidation Acts<sup>F321</sup>, the Water Act 1989 or the Water Act 2003];
- (c) in pursuance of any duty imposed by section 197(1)(a) or (2) or 203(1) or (2) above or of any arrangements made by the Director General of Water Services under section 29(6) of the Water Industry Act 1991;
- (d) for the purpose of facilitating the carrying out by any person mentioned in Part I of Schedule 24 to this Act of any of his functions under any of the enactments or instruments specified in Part II of that Schedule;
- [<sup>F322</sup>(e) for the purpose of enabling or assisting the Secretary of State, the Treasury or the Financial Services Authority to exercise any powers conferred by or under the Financial Services and Markets Act 2000 or by the enactments relating to companies or insolvency;
- (ea) for the purpose of enabling or assisting any inspector appointed under enactments relating to companies to carry out his functions;]
- (f) for the purpose of enabling an official receiver to carry out his functions under the enactments relating to insolvency or for the purpose of enabling or assisting a recognised professional body for the purposes of section 391 of the <sup>M95</sup>Insolvency Act 1986 to carry out its functions as such;
- (g) for the purpose of facilitating the carrying out by the Health and Safety Commission or the Health and Safety Executive of any of its functions under any enactment or of facilitating the carrying out by any enforcing authority, within the meaning of Part I of the <sup>M96</sup>Health and Safety at Work etc. Act 1974, of any functions under a relevant statutory provision, within the meaning of that Act;
- (h) for the purpose of facilitating the carrying out by the Comptroller and Auditor General of any of his functions under any enactment;
- (i) in connection with the investigation of any criminal offence or for the purposes of any criminal proceedings;
- (j) for the purposes of any civil proceedings brought under or by virtue of this Act, any of the other consolidation Acts, the <sup>M97</sup>Water Act 1989<sup>F323</sup>, the Water Act 2003] or any of the enactments or instruments specified in Part II of Schedule 24 to this Act, or of any arbitration under this Act, any of the other consolidation Acts<sup>F324</sup>, the Water Act 1989 or the Water Act 2003]; or
- (k) in pursuance of a Community obligation.

(3) Nothing in subsection (1) above shall be construed—

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- (a) as limiting the matters which may be included in, or made public as part of, a report of—
    - (i) the [<sup>F325</sup>Agency];
    - [<sup>F326</sup>(ia) the Scottish Environment Protection Agency;]
    - (ii) the Director General of Water Services;
    - (iii) a customer service committee maintained under the <sup>M98</sup>Water Industry Act 1991; or
    - (iv) the [<sup>F327</sup>Competition Commission],
 under any provision of this Act [<sup>F328</sup>, Part I or IIA of the Environmental Protection Act 1990, that Act of 1991 [<sup>F329</sup>, the 1995 Act [<sup>F330</sup>, regulations under section 2 of the Pollution Prevention and Control Act 1999, or the Water Act 2003]]];
  - (b) as limiting the matters which may be published under section 201 of that Act [<sup>F331</sup>of 1991]; or
  - (c) as applying to any information which has been made public as part of such a report or has been so published or to any information exclusively of a statistical nature.
- (4) Subject to subsection (5) below, nothing in subsection (1) above shall preclude the disclosure of information—
- (a) if the disclosure is of information relating to a matter connected with the carrying out of the functions of a water undertaker or sewerage undertaker [<sup>F332</sup>, or with the carrying on by a company holding a licence under Chapter 1A of Part 2 of the Water Industry Act 1991 of activities under its licence,] and is made by one Minister of the Crown or government department to another; or
  - (b) if the disclosure is for the purpose of enabling or assisting any public or other authority for the time being designated for the purposes of this section by an order made by the Secretary of State to discharge any functions which are specified in the order.
- (5) The power to make an order under subsection (4) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and where such an order designates an authority for the purposes of paragraph (b) of that subsection, the order may—
- (a) impose conditions subject to which the disclosure of information is permitted by virtue of that paragraph; and
  - (b) otherwise restrict the circumstances in which disclosure is so permitted.
- (6) Any person who discloses any information in contravention of the preceding provisions of this section shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (7) In this section “the other consolidation Acts” means the <sup>M99</sup>Water Industry Act 1991, the <sup>M100</sup>Statutory Water Companies Act 1991, the <sup>M101</sup>Land Drainage Act 1991 and the <sup>M102</sup>Water Consolidation (Consequential Provisions) Act 1991.

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### Textual Amendments

- F316** Words in s. 204(2)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 173(2)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F317** Words in s. 204(2)(a) substituted (1.4.1999) by S.I. 1999/506, **art. 31(a)**
- F318** Words in s. 204(2)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 173(2)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F319** Words in s. 204(2)(a) substituted (21.3.2000) by 1999 c. 24, s. 6, **Sch. 2 para. 8**; S.I. 2000/800, **art. 2**
- F320** Words in s. 204(2)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(3)(a)(ii)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2** (with Sch. 3 para. 7)
- F321** Words in s. 204(2)(b) substituted (1.4.2004) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(3)(a)(iii)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2** (with Sch. 3 para. 7)
- F322** S. 204(2)(e)(ea) substituted for s. 204(2)(e) (1.12.2001) by S.I. 2001/3649, **art. 329**
- F323** Words in s. 204(2)(j) inserted (1.4.2004) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(3)(a)(v)** (a); S.I. 2004/641, **art. 3(y)**, **Sch. 2** (with Sch. 3 para. 7)
- F324** Words in s. 204(2)(j) substituted (1.4.2004) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(3)(a)(v)(b)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2** (with Sch. 3 para. 7)
- F325** Words in s. 204 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F326** S. 204(3)(a)(ia) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 173(3)(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F327** Words in s. 204(3)(a)(iv) substituted (1.4.1999) by S.I. 1999/506, **art. 31(a)**
- F328** Words in s. 204(3)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 173(3)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F329** Words in s. 204(3)(a) substituted (21.3.2000) by 1999 c. 24, s. 6, **Sch. 2 para. 8**; S.I. 2000/800, **art. 2**
- F330** Words in s. 204(3)(a) substituted (1.4.2004) by Water Act 2003 (c. 37), s. 105(3), **Sch. 7 para. 28(3)(b)(iii)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2** (with Sch. 3 para. 7)
- F331** Words in s. 204(3)(b) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 173(4)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F332** Words in s. 204(4)(a) inserted (1.4.2004) by Water Act 2003 (c. 37), s. 105(3), **Sch. 8 para. 53(3)(c)**; S.I. 2004/641, **art. 3(y)**, **Sch. 2** (with Sch. 3 para. 7)

### Modifications etc. (not altering text)

- C99** S. 204 applied (01.12.1991) by Land Drainage Act 1991 (c. 59, SIF 73:1), **ss. 70**, 76(2).
- C100** S. 204 restricted (31.10.2003) by Railways and Transport Safety Act 2003 (c. 20), **s. 115**; S.I. 2003/2681, **art. 2(b)**
- C101** S. 204(2): disclosure powers extended (14.12.2001) by 2001 c. 24, s. 17, **Sch. 4 Pt.I para. 32**

### Marginal Citations

- M95** 1986 c. 45.
- M96** 1974 c. 37.
- M97** 1989 c. 15.
- M98** 1991 c. 56.
- M99** 1991 c. 56.
- M100** 1991 c. 58.
- M101** 1991 c. 59.
- M102** 1991 c. 60.

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## 205 Confidentiality of information relating to underground water etc.

- (1) The person sinking any such well or borehole as is mentioned in section 198 above or, if it is a different person, the owner or occupier of the land on which any such well or borehole is sunk may by notice to the Natural Environment Research Council require that Council to treat as confidential—
  - (a) any copy of or extract from the journal required to be kept under that section; or
  - (b) any specimen taken in exercise of the rights specified in subsection (5) of that section.
- (2) Subject to subsections (3) and (4) below, the Natural Environment Research Council shall not, without the consent of the person giving the notice, allow any matter to which any notice under subsection (1) above relates to be published or shown to any person who is not an officer of that Council or of a department of the Secretary of State.
- (3) Subsection (2) above shall not prohibit any matter from being published or shown to any person in so far as it contains or affords information as to water resources and supplies.
- (4) If at any time the Natural Environment Research Council give notice to any person that in their opinion his consent for the purposes of subsection (2) above is being unreasonably withheld—
  - (a) that person may, within three months after the giving of the notice, appeal to the High Court for an order restraining that Council from acting as if consent had been given; and
  - (b) that Council may proceed as if consent had been given if either no such appeal is brought within that period or the High Court, after hearing the appeal, do not make such an order.
- (5) Any person who fails to comply with any obligation imposed on him by the preceding provisions of this section shall be guilty of an offence and liable, on summary conviction—
  - (a) to a fine not exceeding level 3 on the standard scale; and
  - (b) where the offence continues after conviction, to a further fine of £20 for every day during which it so continues.
- (6) If any person who is admitted to any premises in compliance with section 198(2)(c) above discloses to any person any information obtained by him there with regard to any manufacturing process or trade secret, he shall, unless the disclosure is in performance of his duty, be guilty of an offence and liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding three months or to a fine or to both.

*Making of false statements etc.*

## 206 Making of false statements etc.

- [<sup>F333</sup>(1) If, in furnishing any information or making any application under or for the purposes of any provision of this Act, any person makes a statement which he knows to be false or misleading in a material particular, or recklessly makes any statement which

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is false or misleading in a material particular, he shall be guilty of an offence under this section.]

<sup>F334</sup>(2) .....

(3) Where—

(a) the provisions contained in a licence under Chapter II of Part II of this Act in pursuance of paragraph (b) of subsection (2) of section 46 above, or of that paragraph as modified by subsection (6) of that section, require the use of a meter, gauge or other device; and

(b) such a device is used for the purposes of those provisions,  
any person who wilfully alters or interferes with that device so as to prevent it from measuring correctly shall be guilty of an offence under this section.

[<sup>F335</sup>(3A) If a person intentionally makes a false entry in any record required to be kept by virtue of a licence under Chapter II of Part II of this Act, or a consent under Chapter II of Part III of this Act, he shall be guilty of an offence under this section.]

(4) If, in keeping any record or journal or in furnishing any information which he is required to keep or furnish under section 198 or 205 above, any person knowingly or recklessly makes any statement which is false in a material particular, he shall be guilty of an offence under this section.

[<sup>F336</sup>(5) A person who is guilty of an offence under this section 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

**F333** S. 206(1) substituted (1.4.1996) by 1995 c. 25, s. 112, **Sch. 19 para. 5(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

**F334** S. 206(2) repealed (1.4.1996) by 1995 c. 25, ss. 112, 125(2), **Sch. 19 para. 5(3), Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

**F335** S. 206(3A) inserted (1.4.1996) by 1995 c. 25, s. 112, **Sch. 19 para. 5(4)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

**F336** S. 206(5) substituted for s. 206(5)–(7) (1.4.1996) by 1995 c. 25, s. 112, **Sch. 19 para. 5(5)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

## PART IX

### MISCELLANEOUS AND SUPPLEMENTAL

#### Miscellaneous

#### 207 Directions in the interests of national security etc.

(1) The Secretary of State may, after consultation with the [<sup>F337</sup>Agency], give to the [<sup>F337</sup>Agency] such directions of a general character as appear to the Secretary of State to be requisite or expedient in the interests of national security or for the purpose of mitigating the effects of any civil emergency which may occur.

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- (2) If it appears to the Secretary of State to be requisite or expedient to do so in the interests of national security or for the purpose of mitigating the effects of any civil emergency which has occurred or may occur, he may, after consultation with the [F337Agency], give to the [F337Agency] a direction requiring it to do, or not to do, a particular thing specified in the direction.
- (3) The duty of the [F337Agency] to comply with a direction under this section is a duty which has effect notwithstanding any other duty imposed on it (whether or not by or under this Act).
- (4) The Secretary of State shall lay before each House of Parliament a copy of every direction given under this section unless he is of the opinion that disclosure of the direction is against the interests of national security.
- (5) A person shall not disclose, or be required by virtue of any enactment or otherwise to disclose, anything done by virtue of this section if the Secretary of State has notified him that the Secretary of State is of the opinion that disclosure of that thing is against the interests of national security.
- (6) Any person who discloses any matter in contravention of subsection (5) above shall be guilty of an offence and liable, on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.
- (7) Any reference in this section to a civil emergency is a reference to any natural disaster or other emergency which, in the opinion of the Secretary of State, is or may be likely, in relation to any area—
  - (a) so to disrupt water supplies or sewerage services; or
  - (b) to involve such destruction of or damage to life or property in that area, as seriously and adversely to affect all the inhabitants of that area, or a substantial number of them, whether by depriving them of any of the essentials of life or otherwise.
- (8) In this section “sewerage services” has the same meaning as in the M103Water Industry Act 1991.

#### Textual Amendments

**F337** Words in s. 207 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### Marginal Citations

**M103** 1991 c. 56.

## 208 Civil liability of the [F338Agency] for escapes of water etc.

- (1) Where an escape of water, however caused, from a pipe vested in the [F338Agency] causes loss or damage, the [F338Agency] shall be liable, except as otherwise provided in this section, for the loss or damage.
- (2) The [F338Agency] shall not incur any liability under subsection (1) above if the escape was due wholly to the fault of the person who sustained the loss or damage or of any servant, agent or contractor of his.

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- (3) The [<sup>F338</sup>Agency] shall not incur any liability under subsection (1) above in respect of any loss or damage for which the [<sup>F338</sup>Agency] would not be liable apart from that subsection and which is sustained—
- (a) by any water undertaker or sewerage undertaker or by any statutory undertakers, within the meaning of section 336(1) of the <sup>M104</sup>Town and Country Planning Act 1990;
  - (b) by any public gas supplier within the meaning of Part I of the <sup>M105</sup>Gas Act 1986 or the holder of a licence under section 6(1) of the <sup>M106</sup>Electricity Act 1989;
  - (c) by any highway authority; or
  - (d) by any person on whom a right to compensation is conferred by section 82 of the <sup>M107</sup>New Roads and Street Works Act 1991.
- (4) The <sup>M108</sup>Law Reform (Contributory Negligence) Act 1945, the <sup>M109</sup>Fatal Accidents Act 1976 and the <sup>M110</sup>Limitation Act 1980 shall apply in relation to any loss or damage for which the [<sup>F338</sup>Agency] is liable under this section, but which is not due to the [<sup>F338</sup>Agency's] fault, as if it were due to its fault.
- (5) Nothing in subsection (1) above affects any entitlement which the [<sup>F338</sup>Agency] may have to recover contribution under the <sup>M111</sup>Civil Liability (Contribution) Act 1978; and for the purposes of that Act, any loss for which the [<sup>F338</sup>Agency] is liable under that subsection shall be treated as if it were damage.
- (6) Where the [<sup>F338</sup>Agency] is liable under any enactment or agreement passed or made before 1st April 1982 to make any payment in respect of any loss or damage the [<sup>F338</sup>Agency] shall not incur liability under subsection (1) above in respect of the same loss or damage.
- (7) In this section “fault” has the same meaning as in the <sup>M112</sup>Law Reform (Contributory Negligence) Act 1945.
- (8) Until the coming into force of section 82 of the <sup>M113</sup>New Roads and Street Works Act 1991, subsection (3) above shall have effect as if for paragraph (d) there were substituted the following paragraphs—
- “(d) by any bridge authority, bridge managers, street authority or street managers within the meaning of the <sup>M114</sup>Public Utilities Street Works Act 1950; or
  - (e) by any person on whom a right to compensation under section 26 of that Act of 1950 is conferred.”; but nothing in this section shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing section 82 of that Act into force on different days for different purposes (including the purposes of this section).

#### Textual Amendments

**F338** Words in s. 208 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### Modifications etc. (not altering text)

**C102** S. 208(3)(b) amended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(2)(n)**; S.I. 1996/218, **art. 2**

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**Marginal Citations**

- M104 1990 c. 8.
- M105 1986 c. 44.
- M106 1989 c. 29.
- M107 1991 c. 22.
- M108 1945 c. 28.
- M109 1976 c. 30.
- M110 1980 c. 58.
- M111 1978 c. 47.
- M112 1945 c. 28.
- M113 1991 c. 22.
- M114 1950 c. 39.

**209 Evidence of samples and abstractions.**

- F339(1) . . . . .
- F339(2) . . . . .

- (3) Where, in accordance with the provisions contained in a licence in pursuance of paragraph (b) of subsection (2) of section 46 above, or in pursuance of that paragraph as read with subsection (6) of that section, it has been determined what quantity of water is to be taken—
  - (a) to have been abstracted during any period from a source of supply by the holder of the licence; or
  - (b) to have been so abstracted at a particular point or by particular means, or for use for particular purposes,
 that determination shall, for the purposes of any proceedings under Chapter II of Part II of this Act or any of the related water resources provisions, be conclusive evidence of the matters to which it relates.

- F339(4) . . . . .

**Textual Amendments**

- F339 S. 209(1)(2)(4) repealed (1.4.1996) by 1995 c. 25, ss. 111(1)(c), 120(3), Sch. 24 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3 (with art. 4)

*Byelaws*

**210 Byelaw-making powers of the [F340 Agency].**

- (1) Schedule 25 to this Act shall have effect for conferring powers on the [F340 Agency] to make byelaws for purposes connected with the carrying out of its functions.
- (2) Schedule 26 to this Act shall have effect in relation to byelaws made by the [F340 Agency], whether by virtue of subsection (1) above or by virtue of any other enactment.

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### Textual Amendments

**F340** Words in s. 210 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

## 211 Enforcement of byelaws.

- (1) If any person contravenes any byelaws made by virtue of paragraph 1 of Schedule 25 to this Act, he shall be guilty of an offence and liable, on summary conviction—
  - (a) to a fine not exceeding level 1 on the standard scale; and
  - (b) if the contravention is continued after conviction, to a fine not exceeding £5 for each day on which it is so continued.
- (2) Byelaws made by virtue of paragraph 2 or 3 of that Schedule may contain provision providing for a contravention of the byelaws to constitute a summary offence punishable, on summary conviction, by a fine not exceeding level 5 on the standard scale or such smaller sum as may be specified in the byelaws.
- (3) A person who contravenes any byelaws made by virtue of paragraph 4 or 6 of that Schedule shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale or, in the case of byelaws made by virtue of paragraph 4, such smaller sum as may be specified in the byelaws.
- (4) If any person acts in contravention of any byelaw made by virtue of paragraph 5 of that Schedule he shall be guilty of an offence and liable, on summary conviction—
  - (a) to a fine not exceeding level 5 on the standard scale; and
  - (b) if the contravention is continued after conviction, to a further fine not exceeding £40 for each day on which it is so continued.
- (5) Without prejudice to any proceedings by virtue of subsection (1) or (4) above, the [<sup>F341</sup>Agency] may—
  - (a) take such action as it considers necessary to remedy the effect of any contravention of byelaws made by virtue of paragraph 1 of Schedule 25 to this Act;
  - (b) take such action as may be necessary to remedy the effect of any person's contravention of byelaws made by virtue of paragraph 5 of that Schedule; and
  - (c) recover the expenses reasonably incurred by the [<sup>F341</sup>Agency] in taking any action under paragraph (a) or (b) above from the person in default.
- (6) So much of the <sup>M115</sup>Salmon and Freshwater Fisheries Act 1975 as makes provision with respect to or by reference to offences under that Act shall have effect as if an offence consisting in a contravention of byelaws made by virtue of paragraph 6 of Schedule 25 to this Act were an offence under that Act.
- (7) Section 70 above shall apply in relation to any restrictions imposed by byelaws made by virtue of paragraph 1 of Schedule 25 to this Act as it applies in relation to restrictions imposed by the provisions of Chapter II of Part II of this Act which are mentioned in that section; and sections 100 and 101 above shall have effect in relation to contraventions of byelaws made by virtue of paragraph 4 of that Schedule as they have effect in relation to contraventions of provisions of Part III of this Act.

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#### Textual Amendments

**F341** Words in s. 211 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with **art. 4**)

#### Modifications etc. (not altering text)

**C103** S. 211 excluded (1.7.1999) by S.I. 1999/1746, **art. 4(1)**; S.I. 1998/3178, **art. 3**

#### Marginal Citations

**M115** 1975 c. 51.

## 212 Compensation in respect of certain fisheries byelaws.

### (1) Where—

- (a) the owner or occupier of any fishery by notice to the [<sup>F342</sup>Agency] claims that the fishery is injuriously affected by a byelaw made for any of the purposes specified in subsection (2) below; and
- (b) that claim is made at any time before the end of twelve months after the confirmation of the byelaw,

the claim and the amount of compensation to be paid, by way of annual payment or otherwise, for the damage (if any) to the fishery shall be determined, in default of agreement, by a single arbitrator appointed by one of the Ministers.

### (2) The purposes mentioned in subsection (1)(a) above are the following purposes specified in paragraph 6(2) of Schedule 25 to this Act, that is to say—

- (a) prohibiting the use for taking salmon, trout, or freshwater fish of any instrument (not being a fixed engine) in such waters and at such times as are prescribed by the byelaw;
- (b) specifying the nets and other instruments (not being fixed engines) which may be used for taking salmon, trout, freshwater fish and eels and imposing requirements as to the use of such nets and other instruments;
- (c) imposing requirements as to the construction, design, material and dimensions of any such nets or instruments, including in the case of nets the size of mesh.

### (3) Where by virtue of this section any compensation is payable under any award by way of an annual payment—

- (a) the [<sup>F342</sup>Agency] or the person entitled to the annual payment may at any time after the end of five years from the date of the award require it to be reviewed by a single arbitrator appointed by one of the Ministers; and
- (b) the compensation to be paid after the review shall be such, if any, as may be determined by that arbitrator.

### (4) Expressions used in this section and in the Salmon and Freshwater Fisheries Act 1975 have the same meanings in this section as in that Act.

#### Textual Amendments

**F342** Words in s. 212 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with **art. 4**)

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*Local inquiries*

<sup>F343</sup>**213** .....

**Textual Amendments**

**F343** S. 213 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 174, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

<sup>F344</sup>**214** .....

**Textual Amendments**

**F344** S. 214 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 174, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

<sup>F345</sup>**215** .....

**Textual Amendments**

**F345** S. 215 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 174, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

*Offences etc.*

**216 Enforcement: powers and duties.**

- (1) Without prejudice to its powers of enforcement in relation to the other provisions of this Act, it shall be the duty of the [<sup>F346</sup>Agency] to enforce the provisions to which this section applies.
- (2) No proceedings for any offence under any provision to which this section applies shall be instituted except—
  - (a) by the [<sup>F346</sup>Agency]; or
  - (b) by, or with the consent of, the Director of Public Prosecutions.
- (3) This section applies to Chapter II of Part II of this Act and the related water resources provisions.

**Textual Amendments**

**F346** Words in s. 216 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

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## **217 Criminal liabilities of directors and other third parties.**

- (1) Where a body corporate is guilty of an offence under this Act and that offence 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, then he, as well as the body corporate, shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) Where the affairs of a body corporate are managed by its members, subsection (1) above 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.
- (3) Without prejudice to subsections (1) and (2) above, where the commission by any person of an offence under the water pollution provisions of this Act is due to the act or default of some other person, that other person may be charged with and convicted of the offence whether or not proceedings for the offence are taken against the first-mentioned person.

### *Judicial disqualification*

<sup>F347</sup>**218** .....

#### **Textual Amendments**

**F347** S. 218 repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 175, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

### *Powers to make regulations*

## **219 Powers to make regulations.**

- (1) Any power of one or both of the Ministers to make regulations under any provision of this Act shall be exercisable by statutory instrument subject (except in the case of regulations made by virtue of paragraph 1(3) of Schedule 15 to this Act) to annulment in pursuance of a resolution of either House of Parliament.
- (2) <sup>F348</sup>... The provisions of any regulations made by one or both the Ministers under this Act may include-
  - (a) provision for any duty or other requirement imposed by the regulations on a water undertaker or sewerage undertaker to be enforceable under section 18 of the <sup>M116</sup>Water Industry Act 1991 by the Secretary of State, by the Director or by either of them;
  - (b) provision, where such a duty or requirement is so enforceable by either of them, for enforcement by the Director to be subject to such consent or authorisation as may be prescribed;
  - (c) provision which, in relation to the furnishing of any information or the making of any application under the regulations, makes provision corresponding to section 206(1) and (5) above;

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- (d) provision for anything that may be prescribed by the regulations to be determined under the regulations and for anything falling to be so determined to be determined by such persons, in accordance with such procedure and by reference to such matters, and to the opinion of such persons, as may be prescribed;
- (e) different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (f) such supplemental, consequential and transitional provision as the Minister or Ministers exercising the power considers or consider appropriate.

F349(3) . . . . .

#### Textual Amendments

**F348** Words in s. 219(2) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 176(a), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

**F349** S. 219(3) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 176(b), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

#### Marginal Citations

**M116** 1991 c. 56.

### Construction of Act

## 220 Provisions relating to service of documents.

- (1) Any document required or authorised by virtue of this Act to be served on any person may be 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 paragraph (a) above on the secretary or clerk of that body; or
  - (c) if the person is a partnership, by serving it in accordance with paragraph (a) above on a partner or a person having the control or management of the partnership business.
- (2) For the purposes of this section and section 7 of the <sup>M117</sup>Interpretation Act 1978 (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 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 a partnership business, it shall be the address of 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.
- (3) If a person to be served by virtue of this Act with any document by another has specified to that other an address within the United Kingdom other than his proper

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address (as determined in pursuance of subsection (2) above) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated as his proper address for the purposes of this section and for the purposes of the said section 7 in its application to this section.

- (4) Where under any provision of this Act any document is required to be served on the owner, on a lessee or on the occupier of any premises then—

- (a) if the name or address of the owner, of the lessee or, as the case may be, of the occupier of the premises cannot after reasonable inquiry be ascertained; or
- (b) in the case of service on the occupier, if the premises appear to be or are unoccupied,

that 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.

- (5) This section shall not apply to any document in relation to the service of which provision is made by rules of court.

**Modifications etc. (not altering text)**

C104 S. 220 applied (21.7.1994) by 1994 c. xiii, s. 29(4)

**Marginal Citations**

M117 1978 c. 30.

## 221 General interpretation.

- (1) In this Act, except in so far as the context otherwise requires—

[<sup>F350</sup>“the 1995 Act” means the Environment Act 1995;]

“abstraction”, in relation to water contained in any source of supply, means the doing of anything whereby any of that water is removed from that source of supply, whether temporarily or permanently, including anything whereby the water is so removed for the purpose of being transferred to another source of supply; and “abstract” shall be construed accordingly;

“accessories”, in relation to a main, sewer or other pipe, includes any manholes, ventilating shafts, inspection chambers, settling tanks, wash-out pipes, pumps, ferrules or stopcocks for the main, sewer or other pipe, or any machinery or other apparatus which is designed or adapted for use in connection with the use or maintenance of the main, sewer or other pipe or of another accessory for it, but does not include any [<sup>F351</sup>“electronic communications apparatus”] unless it—

- (a) is or is to be situated inside or in the close vicinity of the main, sewer or other pipe or inside or in the close vicinity of another accessory for it; and
- (b) is intended to be used only in connection with the use or maintenance of the main, sewer or other pipe or of another accessory for it;

and in this definition “stopcock” has the same meaning as in the <sup>M118</sup>Water Industry Act 1991;

[<sup>F352</sup>“the Agency” means the Environment Agency;]

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“agriculture” has the same meaning as in the <sup>M119</sup>Agriculture Act 1947 and “agricultural” shall be construed accordingly;

“analyse”, in relation to any sample of land, water or effluent, includes subjecting the sample to a test of any description, and cognate expressions shall be construed accordingly;

F353

“conservancy authority” means any person who has a duty or power under any enactment to conserve, maintain or improve the navigation of a tidal water and is not a navigation authority or harbour authority;

F354

“contravention” includes a failure to comply, and cognate expressions shall be construed accordingly;

“damage”, in relation to individuals, includes death and any personal injury (including any disease or impairment of physical or mental condition);

“discrete waters” means inland waters so far as they comprise—

- (a) a lake, pond or reservoir which does not discharge to any other inland waters; or
- (b) one of a group of two or more lakes, ponds or reservoirs (whether near to or distant from each other) and of watercourses or mains connecting them, where none of the inland waters in the group discharges to any inland waters outside the group;

“disposal”—

- (a) in relation to land or any interest or right in or over land, includes the creation of such an interest or right and a disposal effected by means of the surrender or other termination of any such interest or right; and
- (b) in relation to sewage, includes treatment;

and cognate expressions shall be construed accordingly;

“drain” has, subject to subsection (2) below, the same meaning as in the <sup>M120</sup>Water Industry Act 1991;

“drainage” in the expression “drainage works” has the meaning given by section 113 above for the purposes of Part IV of this Act;

“drought order” means an ordinary drought order under subsection (1) of section 73 above or an emergency drought order under subsection (2) of that section;

“effluent” means any liquid, including particles of matter and other substances in suspension in the liquid;

“enactment” includes an enactment contained in this Act or in any Act passed after this Act;

[<sup>F355</sup>“enforcement notice” has the meaning given by section 90B above;]

“engineering or building operations”, without prejudice to the generality of that expression, includes—

- (a) the construction, alteration, improvement, maintenance or demolition of any building or structure or of any reservoir, watercourse, dam, weir, well, borehole or other works; and
- (b) the installation, modification or removal of any machinery or apparatus;

“financial year” means the twelve months ending with 31st March;

[<sup>F356</sup>“flood defence functions”, in relation to the Agency, means—

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- (a) its functions with respect to flood defence and land drainage by virtue of Part IV of this Act, the <sup>M121</sup>Land Drainage Act 1991 and section 6 of the 1995 Act;
- (b) those functions transferred to the Agency by section 2(1)(a)(iii) of the 1995 Act which were previously transferred to the Authority by virtue of section 136(8) of the <sup>M122</sup>Water Act 1989 and paragraph 1(3) of Schedule 15 to that Act (transfer of land drainage functions under local statutory provisions and subordinate legislation); and
- (c) any other functions of the Agency under any of the flood defence provisions of this Act;]

[<sup>F357</sup>“flood defence provisions”, in relation to this Act, means—

- (a) any of the following provisions of this Act, that is to say—
  - (i) Part IV;
  - (ii) sections 133 to 141 (including Schedule 15), 143, <sup>F358</sup>... 155, 165 to 167, 180, 193, 194 and paragraph 5 of Schedule 25;
- (b) any of the following provisions of the 1995 Act, that is to say—
  - (i) section 6(4) (general supervision of flood defence);
  - (ii) section 53 (inquiries and other hearings); and
  - (iii) Schedule 5 (membership and proceedings of regional and local flood defence committees); and
- (c) any other provision of this Act or the 1995 Act so far as it relates to a provision falling within paragraph (a) or (b) above;]

“harbour” has the same meaning for the purposes of the flood defence provisions of this Act as in [<sup>F359</sup>section 313 of the Merchant Shipping Act 1995];

“harbour authority” (except in the flood defence provisions of this Act, in which it has the same meaning as in [<sup>F360</sup>section 313 of the Merchant Shipping Act 1995]) means a person who is a harbour authority [<sup>F360</sup>as defined in section 151 for the purposes of Chapter II of Part VI of that Act] and is not a navigation authority;

“highway” has the same meaning as in the <sup>M123</sup>Highways Act 1980;

“information” includes anything contained in any records, accounts, estimates or returns;

“inland waters” means the whole or any part of—

- (a) any river, stream or other watercourse (within the meaning of Chapter II of Part II of this Act), whether natural or artificial and whether tidal or not;
- (b) any lake or pond, whether natural or artificial, or any reservoir or dock, in so far as the lake, pond, reservoir or dock does not fall within paragraph (a) of this definition; and
- (c) so much of any channel, creek, bay, estuary or arm of the sea as does not fall within paragraph (a) or (b) of this definition;

“joint planning board” has the same meaning as in the <sup>M124</sup>Town and Country Planning Act 1990;

“local authority” means the council of any county, [<sup>F361</sup>county borough,] district or London borough or the Common Council of the City of London;

“local statutory provision” means—

- (a) a provision of a local Act (including an Act confirming a provisional order);

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- (b) a provision of so much of any public general Act as has effect with respect to a particular area, with respect to particular persons or works or with respect to particular provisions falling within any paragraph of this definition;
- (c) a provision of an instrument made under any provision falling within paragraph (a) or (b) above; or
- (d) a provision of any other instrument which is in the nature of a local enactment;

“main river” means a main river within the meaning of Part IV of this Act;

“main river map” has, subject to section 194 above, the meaning given by section 193(2) above;

“micro-organism” includes any microscopic, biological entity which is capable of replication;

“minimum acceptable flow”, in relation to any inland waters, means (except in sections 21 and 22 above and subject to section 23(3) above) the minimum acceptable flow as for the time being contained in provisions which are in force under section 21(7) above in relation to those waters;

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“the Ministers” means the Secretary of State and the Minister;

“modifications” includes additions, alterations and omissions, and cognate expressions shall be construed accordingly;

“mortgage” includes any charge or lien on any property for securing money or money’s worth, and “mortgagee” shall be construed accordingly;

“navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock;

“notice” means notice in writing;

“owner”, in relation to any premises, means the person who—

- (a) is for the time being receiving the rack-rent of the premises, whether on his own account or as agent or trustee for another person; or
- (b) would receive the rack-rent if the premises were let at a rack-rent,

but for the purposes of Schedule 2 to this Act, Chapter II of Part II of this Act and the related water resources provisions does not include a mortgagee not in possession, and cognate expressions shall be construed accordingly;

“prescribed” means prescribed by regulations made by the Secretary of State or, in relation to regulations made by the Minister, by those regulations;

“public authority” means any Minister of the Crown or government department, the <sup>F362</sup>Agency], any local authority or any person certified by the Secretary of State to be a public authority for the purposes of this Act;

“public sewer” means a sewer for the time being vested in a sewerage undertaker in its capacity as such, whether vested in that undertaker by virtue of a scheme under Schedule 2 to the <sup>M125</sup>Water Act 1989, section 179 of or Schedule 2 to the <sup>M126</sup>Water Industry Act 1991 or otherwise;

“records” includes computer records and any other records kept otherwise than in a document;

<sup>F363</sup>“the related water resources provisions”, in relation to Chapter II of Part II of this Act, means—

- (a) the following provisions of this Act, that is to say, the provisions—

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- (i) of sections 21 to 23 (including Schedule 5);
- (ii) of sections 120, 125 to 130, 158, 189, 199 to 201, 206(3), 209(3), 211(1) and 216; and
- (iii) of paragraph 1 of Schedule 25; and
- (b) the following provisions of the 1995 Act, that is to say, the provisions—
  - (i) of sections 41 and 42 (charging schemes) as they have effect by virtue of subsection (1)(a) of section 41 (licences under Chapter II of Part II of this Act); and
  - (ii) of subsections (1) and (2) of section 53 (inquiries and other hearings);]

“sewage effluent” includes any effluent from the sewage disposal or sewerage works of a sewerage undertaker but does not include surface water;

“sewer” has, subject to subsection (2) below, the same meaning as in the Water Industry Act 1991;

“source of supply” means—

- (a) any inland waters except, without prejudice to subsection (3) below in its application to paragraph (b) of this definition, any which are discrete waters; or
- (b) any underground strata in which water is or at any time may be contained;

“street” has, subject to subsection (4) below, the same meaning as in Part III of the <sup>M127</sup>New Roads and Street Works 1991;

“subordinate legislation” has the same meaning as in the <sup>M128</sup>Interpretation Act 1978;

“substance” includes micro-organisms and any natural or artificial substance or other matter, whether it is in solid or liquid form or in the form of a gas or vapour;

“surface water” includes water from roofs;

“trade effluent” includes any effluent which is discharged from premises used for carrying on any trade or industry, other than surface water and domestic sewage, and for the purposes of this definition any premises wholly or mainly used (whether for profit or not) for agricultural purposes or for the purposes of fish farming or for scientific research or experiment shall be deemed to be premises used for carrying on a trade;

“underground strata” means strata subjacent to the surface of any land;

“vessel” includes a hovercraft within the meaning of the <sup>M129</sup>Hovercraft Act 1968;

“watercourse” includes (subject to sections 72(2) and 113(1) above) all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows, except mains and other pipes which—

- (a) belong to the [<sup>F362</sup>Agency] or a water undertaker; or
- (b) are used by a water undertaker or any other person for the purpose only of providing a supply of water to any premises;

“water pollution provisions”, in relation to this Act, means the following provisions of this Act—

- (a) the provisions of Part III of this Act;
- (b) sections 161 [<sup>F364</sup>to 161D], 190, 202, [<sup>F365</sup>and 203] above; and
- (c) paragraph 4 of Schedule 25 to this Act and section 211 above so far as it relates to byelaws made under that paragraph.

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[<sup>F366</sup>and the following provisions of the 1995 Act, that is to say, the provisions of subsections (1) and (2) of section 53.]

- (2) References in this Act to a pipe, including references to a main, a drain or a sewer, shall include references to a tunnel or conduit which serves or is to serve as the pipe in question and to any accessories for the pipe; and, accordingly, references to the laying of a pipe shall include references to the construction of such a tunnel or conduit, to the construction or installation of any such accessories and to the making of a connection between one pipe and another.
- (3) Any reference in this Act to water contained in underground strata is a reference to water so contained otherwise than in a sewer, pipe, reservoir, tank or other underground works constructed in any such strata; but for the purposes of this Act water for the time being contained in—
  - (a) a well, borehole or similar work, including any adit or passage constructed in connection with the well, borehole or work for facilitating the collection of water in the well, borehole or work; or
  - (b) any excavation into underground strata, where the level of water in the excavation depends wholly or mainly on water entering it from those strata,
 shall be treated as water contained in the underground strata into which the well, borehole or work was sunk or, as the case may be, the excavation was made.
- (4) Until the coming into force of Part III of the <sup>M130</sup>New Roads and Street Works Act 1991, the definition of “street” in subsection (1) above shall have effect as if the reference to that Part were a reference to the <sup>M131</sup>Public Utilities Street Works Act 1950; but nothing in this section shall be taken—
  - (a) to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing Part III of that Act into force on different days for different purposes (including the purposes of this section); or
  - (b) in the period before the coming into force of that Part, to prevent references in this Act to a street, where the street is a highway which passes over a bridge or through a tunnel, from including that bridge or tunnel.
- (5) For the purposes of any provision of this Act by or under which power is or may be conferred on any person to recover the expenses incurred by that person in doing anything, those expenses shall be assumed to include such sum as may be reasonable in respect of establishment charges or overheads.
- (6) References in this Act to the later or latest of two or more different times or days are, in a case where those times or days coincide, references to the time at which or, as the case may be, the day on which they coincide.
- (7) For the purposes of this Act—
  - (a) references in this Act to more than one Minister of the Crown, in relation to anything falling to be done by those Ministers, are references to those Ministers acting jointly; and
  - (b) any provision of this Act by virtue of which any function of a Minister of the Crown is exercisable concurrently by different Ministers, shall have effect as providing for that function also to be exercisable jointly by any two or more of those Ministers.
- (8) Sub-paragraph (1) of paragraph 1 of Schedule 2 to the <sup>M132</sup>Water Consolidation (Consequential Provisions) Act 1991 has effect (by virtue of sub-paragraph (2)(b) of

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that paragraph) so that references in this Act to things done under or for the purposes of provisions of this Act, the <sup>M133</sup>Water Industry Act 1991 or the <sup>M134</sup>Land Drainage Act 1991 include references to things done, or treated as done, under or for the purposes of the corresponding provisions of the law in force before the commencement of this Act.

- (9) Subject to any provision to the contrary which is contained in Schedule 26 to the <sup>M135</sup>Water Act 1989 or in the <sup>M136</sup>Water Consolidation (Consequential Provisions) Act 1991, nothing in any local statutory provision passed or made before 1st September 1989 shall be construed as relieving any water undertaker or sewerage undertaker from any liability arising by virtue of this Act in respect of any act or omission occurring on or after that date.

#### Textual Amendments

- F350** Words in s. 221(1) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F351** Words in s. 221 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by **Communications Act 2003** (c. 21), s. 411(2), **Sch. 17 para. 113** (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, **art. 3(2)** (with art. 11)
- F352** Words in s. 221(1) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F353** Words in s. 221(1) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 177(4)**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F354** Words in s. 221(1) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), **Sch. 22 para. 177(5)**, **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F355** Words in s. 221(1) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(6)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F356** Words in s. 221(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(7)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F357** Words in s. 221(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(8)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F358** Words in s. 221(1) repealed (17.3.2004 for E., 1.4.2004 for W.) by **Water Act 2003** (c. 37), ss. 69(4), 105(3), **Sch. 9 Pt. 3**; S.I. 2004/641, art. 2(a)(d); S.I. 2004/910, art. 2(1)(b)
- F359** Words in s. 221(1) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 90(a)** (with s. 312(1))
- F360** Words in s. 221(1) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), **Sch. 13 para. 90(b)** (with s. 312(1))
- F361** Words in s. 221(1) inserted (1.4.1996) by 1994 c. 19, s. 22(5), **Sch. 11 Pt. I para. 3(6)** (with ss. 54(4) (7), 55(5), **Sch. 17 paras. 22(1), 23(2)**); S.I. 1996/396, art. 3, **Sch. 1**
- F362** Words in s. 221 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 128** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F363** Words in s. 221(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(9)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F364** Words in s. 221(1) inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(10)(a)(i)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F365** Words in s. 221(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(10)(a)(ii)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)
- F366** Words in s. 221(1) added (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 177(10)(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3** (with art. 4)

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#### **Modifications etc. (not altering text)**

**C105** S. 221 applied (1.4.2004) by [Water Act 2003 \(c. 37\)](#), **ss. 27(3)**, 105(3); S.I. 2004/641, art. 3(i) (with [Sch. 3 para. 7](#))

**C106** S. 221(1): definition applied (01.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), **ss. 61(2)**, 67(2)(6), 76(2).

#### **Marginal Citations**

**M118** 1991 c. 56.

**M119** 1947 c. 48.

**M120** 1991 c. 56.

**M121** 1991 c. 59.

**M122** 1989 c. 15.

**M123** 1980 c. 66.

**M124** 1990 c. 8.

**M125** 1989 c. 15.

**M126** 1991 c. 56.

**M127** 1991 c. 22.

**M128** 1978 c. 30.

**M129** 1968 c. 59.

**M130** 1991 c. 22.

**M131** 1950 c. 39.

**M132** 1991 c. 60.

**M133** 1991 c. 56.

**M134** 1991 c. 59.

**M135** 1989 c. 15.

**M136** 1991 c. 60.

#### *Other supplemental provisions*

#### **[<sup>F367</sup>222 Crown application.**

- (1) Subject to the provisions of this section, this Act binds the Crown.
- (2) No contravention by the Crown of any provision made by or under this Act shall make the Crown criminally liable; but the High Court may, on the application of the Agency, declare unlawful any act or omission of the Crown which constitutes such a contravention.
- (3) Notwithstanding anything in subsection (2) above, the provisions of this Act shall apply to persons in the public service of the Crown as they apply to other persons.
- (4) If the Secretary of State certifies that it appears to him, as respects any Crown premises and any powers of entry exercisable in relation to them specified in the certificate, that it is requisite or expedient that, in the interests of national security, the powers should not be exercisable in relation to those premises, those powers shall not be exercisable in relation to those premises.
- (5) Subject to subsection (4) above, the powers conferred by sections 154, 156, 160, 162(3) and 168 above shall be exercisable in relation to land in which there is a Crown or Duchy interest only with the consent of the appropriate authority.
- (6) Nothing in this section shall be taken as in any way affecting Her Majesty in her private capacity; and this subsection shall be construed as if section 38(3) of the

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<sup>M137</sup>Crown Proceedings Act 1947 (interpretation of references to Her Majesty in her private capacity) were contained in this Act.

- (7) Nothing in this Act, as read with the other provisions of this section, shall be construed as conferring any power of levying drainage charges in respect of lands below the high-water mark of ordinary spring tides.
- (8) Section 74 of the <sup>M138</sup>Land Drainage Act 1991 (Crown application), so far as it relates to land in which there is a Crown or Duchy interest, shall apply in relation to the flood defence provisions of this Act as it applies in relation to that Act; but nothing in this subsection shall affect any power conferred by this Act for the purposes both of the Agency's functions under those provisions and of other functions of the Agency.
- (9) In this section—  
     “the appropriate authority” has the same meaning as it has in Part XIII of the <sup>M139</sup>Town and Country Planning Act 1990 by virtue of section 293(2) of that Act;  
     “Crown or Duchy interest” means an interest which belongs to Her Majesty in right of the Crown or of the Duchy of Lancaster, or to the Duchy of Cornwall, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department;  
     “Crown premises” means premises held by or on behalf of the Crown.
- (10) The provisions of subsection (3) of section 293 of the <sup>M140</sup>Town and Country Planning Act 1990 (questions relating to Crown application) as to the determination of questions shall apply for the purposes of this section.]

#### Textual Amendments

**F367** S. 222 substituted (1.7.1997 for certain purposes and otherwise *prosp.*) by 1995 c. 25, ss. 116, 125(2), **Sch. 21 Pt. I para. 2(4)** (with ss. 7(6), 115, 117); S.I. 1997/1626, **art. 2** (with transitional provisions in art. 3)

#### Marginal Citations

**M137** 1947 c. 44.  
**M138** 1991 c. 59.  
**M139** 1990 c. 8.  
**M140** 1990 c. 8.

## 223 Exemption for visiting forces.

- (1) Chapter II of Part II of this Act and the related water resources provisions shall not apply—  
     (a) to anything done by a member of a visiting force in his capacity as a member of that force; or  
     (b) to any land occupied by or for the purposes of a visiting force.
- (2) In this section “visiting force” means any such body, contingent or detachment of the forces of any country as is a visiting force for the purposes of any of the provisions of the <sup>M141</sup>Visiting Forces Act 1952.

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#### Marginal Citations

M141 1952 c. 67.

### [<sup>F368</sup>224 Application to the Isles of Scilly.

- (1) Subject to the provisions of any order under this section, this Act shall not apply in relation to the Isles of Scilly.
- (2) The Secretary of State may, after consultation with the Council of the Isles of Scilly, by order provide for the application of any provisions of this Act to the Isles of Scilly; and any such order may provide for the application of those provisions to those Isles with such modifications as may be specified in the order.
- (3) An order under this section may—
  - (a) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
  - (b) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate, including provision saving provision repealed by or under any enactment.
- (4) The power of the Secretary of State to make an order under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.]

#### Textual Amendments

**F368** S. 224 substituted (1.2.1996 in so far as it confers power to make an order or make provision in relation to the exercise of that power and 1.4.2020 in so far as not already in force) by 1995 c. 25, ss. 118(5), 125(2) (with ss. 7(6), 115, 117); S.I. 1996/186, art. 2 (with art. 4); S.I. 2020/216, art. 2

### 225 Short title, commencement and extent.

- (1) This Act may be cited as the Water Resources Act 1991.
- (2) This Act shall come into force on 1st December 1991.
- (3) Subject to subsections (4) to (6) of section 2 and to section 224 above, to the extension of section 166(3) above to Scotland and to the extension, by virtue of any other enactment, of any provision of this Act to the territorial sea, this Act extends to England and Wales only.
- (4) Nothing in this Act, so far as it extends to Scotland, shall authorise the [<sup>F369</sup>Agency] to acquire any land in Scotland compulsorily.

#### Textual Amendments

**F369** Word in s. 225 substituted (subject to other provisions of the amending Act) (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 128 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3

**Status:**

Point in time view as at 01/04/2005.

**Changes to legislation:**

Water Resources Act 1991 is up to date with all changes known to be in force on or before 03 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.