Water Resources Act 1991

1991 CHAPTER 57

PART III

CONTROL OF POLLUTION OF WATER RESOURCES

Modifications etc. (not altering text)

C1 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

C2 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**

C3 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)

C4 S. 82 modified (1.7.1999) by S.I. 1999/672, art. 5, **Sch. 2**

C5 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 **[**[F1]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,

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 **[**[F1]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 **[**[F1]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 **[**[F1]Agency**]**.

Textual Amendments

F1 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)

C6 S. 83 amended (20.3.1992) by S.I. 1992/337, **reg. 4**

C7 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**

C8 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)**
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 **[**[F2]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 [M1]Control of Pollution Act 1974 (which makes corresponding provision for Scotland),

are achieved at all times.

(2) It shall be the duty of the **[**[F2]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 **[**[F3]the Scottish Environment Protection Agency**]**.

Textual Amendments

F2 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)

F3 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)

C9 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

M1 1974 c. 40.

CHAPTER II

POLLUTION OFFENCES

Modifications etc. (not altering text)

C10 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.

(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)

C11 S. 85 restricted (13.4.2001) by S.I. 2001/1478, **reg. 3(c)**
C12 S. 85 applied by London Docklands Railway Act 1991 (c. xxiii), **s. 7(2)(a)**
C13 S. 85 applied (with modifications) (16.3.1992) by Avon Weir Act 1992 (c. v), **s. 18(6)** (with s. 61)
C14 S. 85 applied (with modifications) (13.2.1992) by British Railways Act 1992 (c. i), **s. 18(3)(a)**
C15 S. 85 applied (with modifications) (16.3.1992) by London Underground Act 1992 (c.iii), **s. 12(2)(a)**
C16 S. 85 applied (with modifications) (16.3.1992) by Aire and Calder Navigation Act 1992 (c. iv), **s. 18(4)(a)**
C17 S. 85 applied (with modifications) (18.6.1992) by British Railways (No. 2) Act 1992 (c. xi), **s. 22(4)(a)**
C18 S. 85 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para.9** (with s. 46).
C19 S. 85 applied (with modifications) (29.3.1993) by 1993 c. iv, **s. 23(4)(a)** (with ss. 36, 41(5), 44(1)).
C20 S. 85 applied (with modifications) (27.5.1993) by 1993 c. vii, **s. 11(2)(a)** (with ss. 19(2), 29(1)).
C21 S. 85 applied (with modifications) (1.7.1993) by 1993 c. ix, **s. 9(2)(a)** (with ss. 15(2), 24(1)).
C22 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)**
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)**
C23 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 **[**[F4]Agency**]** has given that person notice prohibiting him from making or, as the case may be, continuing the discharge; or

(b) the **[**[F4]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 **[**[F4]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.

Textual Amendments

F4 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)

C24 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)**

C25 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.

[[F5](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.

(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.

[[F6](4) In this section "main connection" has the same meaning as in section 110A of the Water Industry Act 1991.**]**

Textual Amendments

F5 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

F6 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)

C26 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)**

C27 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 [M2]Control of Pollution Act 1974 (which makes corresponding provision for Scotland);

(b) an authorisation for a prescribed process designated for central control granted under Part I of the [M3]Environmental Protection Act 1990;

(c) a waste management or disposal licence;

(d) a licence granted under Part II of the [M4]Food and Environment Protection Act 1985;

(e) section 163 below or section 165 of the [M5]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—

(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 the [M6]Environmental Protection Act 1990.

Modifications etc. (not altering text)

C28 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).

C29 S. 88(1) applied (with modifications) (1.4.1999) by S.I. 1998/2746, **reg. 14(2)**

C30 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

M2 1974 c. 40.

M3 1990 c. 43.

M4 1985 c. 48.55.

M5 1991 c. 56.

M6 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 **[**[F7]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.

(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 to enter controlled waters.

(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 **[**[F7]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 [M7]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 [M8]Mines and Quarries Act 1954.

Textual Amendments

F7 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**

Marginal Citations

M7 1980 c. 66.

M8 1954 c. 70.

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 **[**[F8]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 **[**[F8]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 **[**[F8]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

F8 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)

[[F9] Consents for the purposes of sections 88 to 90

Textual Amendments

F9 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)

[F10]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

(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

F10 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)

[F11]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.

(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

F11 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 **[**[F12]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 **[**[F13]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; or

(f) has 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.

[[F14](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 **[**[F15]or variation**]** in question, or any person whose deposits, discharges or other conduct is or would be authorised by the consent **[**[F16], or the person on whom the enforcement notice was served,**]** may appeal against the decision to the Secretary of State.

[[F17](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.

(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 **[**[F18]6**]** of Schedule 10 to this Act, without such an application having been made.

Textual Amendments

F12 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**

F13 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)

F14 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)

F15 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)

F16 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)

F17 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)

F18 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)

Modifications etc. (not altering text)

C31 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**

[[F19]CHAPTER IIA

ABANDONED MINES

Textual Amendments

F19 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**

[F20]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 [M9]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 [M10]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 [M11]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 [M12]Insolvency Act 1986;

(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 [M13]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

F20 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

M9 1986 c. 45.
M10 1985 c. 66.
M11 1954 c. 70.
M12 1986 c. 45.
M13 1986 c. 45.

[F21]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.

(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 [M14]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 [M15]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

F21 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

M14 1985 c. 66.

M15 1990 c. 43.

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 **[**[F22]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 **[**[F22]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.

[[F23](3) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).**]**

Textual Amendments

F22 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)

F23 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)

C32 S. 92 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).

C33 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—

(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 **[**[F24]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 **[**[F24]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 **[**[F24]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 **[**[F24]Agency**]** in accordance with Schedule 11 to this Act and otherwise in accordance with that Schedule.

Textual Amendments

F24 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)

C34 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. I para. 4(3)**.

C35 S. 93 amended (27.8.1993) by 1993 c. 12, ss. 40, 51(2), **Sch. 3 Pt. I para. 9** (with s. 46).

Status: *Point in time view as at 21/11/1996.*
Changes to legislation: *There are currently no known outstanding effects for the Water Resources Act 1991, Part III. (See end of Document for details)*

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—

(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.

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 **[**[F25]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 **[**[F25]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.

[[F26](4) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).**]**

Textual Amendments

F25 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)

F26 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)

C36 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)

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 **[**[F27]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 **[**[F27]Agency**]** by regulations under section 92 above.

(3) The Ministers shall not make an order under this section unless they have first consulted the **[**[F27]Agency**]**.

Textual Amendments

F27 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 **[**[F28]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 **[**[F29]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

F28 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).

F29 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 [F30Agency].

(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 **[**F30Agency**]**; and

(b) for the purposes of the application of the provisions of this Part in relation to discharges by the **[**F30Agency**]**, 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 **[**F30Agency**]**) and, in prescribed cases, to be deemed to have been so given.

Textual Amendments

F30 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)

C37 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 M16Interpretation 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

M16 1978 c. 30.

101 Limitation for summary offences under Part III.

Notwithstanding anything in section 127 of the M17Magistrates' Courts Act 1980 (time limit for summary proceedings), a magistrates' court may try any summary offence

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
M17 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 [M18]Water Act 1989).

Marginal Citations
M18 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.

Status: *Point in time view as at 21/11/1996.*
Changes to legislation: *There are currently no known outstanding effects for the Water Resources Act 1991, Part III. (See end of Document for details)*

(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—

(a) 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;

(b) 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;

(c) 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;

(d) 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—

(a) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate; and

(b) 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)

C38 S. 104 definition of "controlled waters" applied by London Docklands Railway Act 1991 (c. xxiii), **s. 7(2)(a)**

C39 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)**

C40 S. 104(1)(c) applied (with modifications) (6.1.1997) by S.I. 1996/3001, **reg. 7(2)**

Status:
Point in time view as at 21/11/1996.

Changes to legislation:
There are currently no known outstanding effects for the Water Resources Act 1991, Part III.