

SCHEDULES

SCHEDULE 12

Section 94.

NITRATE SENSITIVE AREA ORDERS

PART I

APPLICATIONS BY THE AUTHORITY FOR DESIGNATION ORDERS

Orders made only on application

- 1 (1) Subject to sub-paragraphs (2) and (3) below, the relevant Minister shall not make an order under section 94 of this Act by virtue of which any land is designated as land comprised in a nitrate sensitive area, except with the consent of the Treasury and on an application which—
- (a) has been made by the Authority in accordance with paragraph 2 below; and
 - (b) in identifying controlled waters by virtue of sub-paragraph (2)(a) of that paragraph, identified the controlled waters with respect to which that land is so comprised by the order.
- (2) This paragraph shall not apply to an order which reproduces or amends an existing order without adding any land appearing to the relevant Minister to constitute a significant area to the land already comprised in the areas for the time being designated as nitrate sensitive areas.

Procedure for applications

- 2 (1) The Authority shall not for the purposes of paragraph 1 above apply for the making of any order under section 94 of this Act by which any land would be comprised in the areas for the time being designated as nitrate sensitive areas unless it appears to the Authority—
- (a) that pollution is or is likely to be caused by the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use of particular land in England and Wales for agricultural purposes; and
 - (b) that the provisions for the time being in force in relation to those waters and that land are not sufficient, in the opinion of the Authority, for preventing or controlling such an entry of nitrate into those waters.
- (2) An application under this paragraph shall identify—
- (a) the controlled waters appearing to the Authority to be the waters which the nitrate is or is likely to enter; and
 - (b) the land appearing to the Authority to be the land the use of which for agricultural purposes, or the doing of anything in connection with whose use for agricultural purposes, is resulting or is likely to result in the entry of nitrate into those waters.

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- (3) An application under this paragraph shall be made—
- (a) where the land identified in the application is wholly in Wales, by serving a notice containing the application on the Secretary of State; and
 - (b) in any other case, by serving such a notice on each of the Ministers.

PART II

ORDERS CONTAINING MANDATORY PROVISIONS

Publication of proposal for order containing mandatory provisions

- 3 (1) This paragraph applies where the relevant Minister proposes to make an order under section 94 of this Act which—
- (a) makes or modifies any such provision as is authorised by subsection (3)(a) of that section; and
 - (b) in doing so, contains provision which is not of one of the following descriptions, that is to say—
 - (i) provision reproducing existing provisions without modification and in relation to substantially the same area; and
 - (ii) provision modifying any existing provisions so as to make them less onerous.
- (2) The relevant Minister shall, before making any such order as is mentioned in sub-paragraph (1) above—
- (a) publish a notice with respect to the proposed order, at least once in each of two successive weeks, in one or more newspapers circulating in the locality in relation to which the proposed order will have effect;
 - (b) not later than the date on which that notice is first published, serve a copy of the notice on—
 - (i) the Authority;
 - (ii) every local authority and water undertaker whose area includes the whole or any part of that locality; and
 - (iii) in the case of an order containing any such provision as is authorised by section 94(3)(b) of this Act, such owners and occupiers of agricultural land in that locality as appear to the relevant Minister to be likely to be affected by the obligations in respect of which payments are to be made under that provision;
- and
- (c) publish a notice in the London Gazette which-
 - (i) names every local authority on whom a notice is required to be served under this paragraph;
 - (ii) specifies a place where a copy of the proposed order and of any relevant map or plan may be inspected; and
 - (iii) gives the name of every newspaper in which the notice required by virtue of paragraph (a) above was published and the date of an issue containing the notice.
- (3) The notice required by virtue of sub-paragraph (2)(a) above to be published with respect to any proposed order shall—

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- (a) state the general effect of the proposed order;
- (b) specify a place where a copy of the proposed order, and of any relevant map or plan, may be inspected by any person free of charge at all reasonable times during the period of forty-two days beginning with the date of the first publication of the notice; and
- (c) state that any person may, within that period, by notice to the Secretary of State or, as the case may be, to one of the Ministers object to the making of the order.

Supply of copies of proposed orders

- 4 The Secretary of State and, in a case where he is proposing to join in making the order, the Minister shall, at the request of any person and on payment by that person of such charge (if any) as the Secretary of State or the Minister may reasonably require, furnish that person with a copy of any proposed order of which notice has been published under paragraph 3 above.

Modifications of proposals

- 5 (1) Where notices with respect to any proposed order have been published and served in accordance with paragraph 3 above and the period of forty-two days mentioned in sub-paragraph (3)(b) of that paragraph has expired, the relevant Minister may—
- (a) make the order either in the proposed terms or, subject to sub-paragraph (2) below (but without any further compliance with paragraph 3 above), in those terms as modified in such manner as he thinks fit; or
 - (b) decide not to make any order.
- (2) The relevant Minister shall not make such a modification of a proposed order of which notice has been so published and served as he considers is likely adversely to affect any persons unless he has given such notices as he considers appropriate for enabling those persons to object to the modification.
- (3) Subject to sub-paragraph (2) above and to the service of notices of the proposed modification on such local authorities as appear to him to be likely to be interested in it, the modifications that may be made by the relevant Minister include any modification of any area designated by the proposed order as a nitrate sensitive area.
- (4) For the purposes of this Schedule it shall be immaterial, in a case in which a modification such as is mentioned in sub-paragraph (3) above incorporates land in England in an area which (but for the modification) would have been wholly in Wales, that any requirements of paragraph 3 above in relation to the proposed order have been complied with by the Secretary of State, rather than by the Ministers.

Consideration of objections etc.

- 6 Without prejudice to section 213 of this Act, where notices with respect to any proposed order have been published and served in accordance with paragraph 3 above, the Secretary of State or, as the case may be, the Ministers may, if he or they consider it appropriate to do so, hold a local inquiry before deciding whether or not to make the proposed order or to make it with modifications.

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Consent of Treasury for payment provisions

- 7 The consent of the Treasury shall be required for the making of any order under section 94 of this Act the making of which does not require the consent of the Treasury by virtue of paragraph 1 above but which contains any such provision as is authorised by subsection (3)(b) of that section.