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## SCHEDULES

### SCHEDULE 22

Section 120.

#### MINOR AND CONSEQUENTIAL AMENDMENTS

##### *The Alkali, &c., Works Regulation Act 1906*

- 1 (1) The <sup>M1</sup>Alkali, &c, Works Regulation Act 1906 shall be amended in accordance with the following provisions of this paragraph.
- (2) In section 1(1) (alkali work to be carried on so as to secure that the condensation of hydrochloric acid gas, to the satisfaction of the chief inspector, falls below certain levels) for the words “the chief inspector” there shall be substituted the words “ the appropriate Agency ”.
- (3) In section 2(1) (no objection to be taken by an inspector to certain discharges) for the words “an inspector” there shall be substituted the words “ the appropriate Agency ”.
- (4) In section 9—
- (a) in subsection (5) (condition of issue of certificate on first registration that the work is furnished with such appliances as appear to the chief inspector or, on appeal, the Secretary of State to be necessary for certain purposes) for the words “the chief inspector” there shall be substituted the words “ the appropriate Agency ”;
  - (b) the proviso to that subsection (power of Secretary of State to dispense with certain requirements) shall cease to have effect; and
  - (c) in subsection (7) (notice of certain changes to be sent to the Secretary of State) for the words which are to be construed as a reference to the Secretary of State, there shall be substituted the words “ the appropriate Agency ”.
- (5) In section 22(1) (power of Secretary of State, after inquiring into a complaint, to direct proceedings to be taken by an inspector) for the words “an inspector” there shall be substituted the words “ the appropriate Agency ”.
- (6) In section 23(2) (damages not recoverable under the section from a person with a certificate of compliance from the chief inspector) for the words “the chief inspector” there shall be substituted the words “ the appropriate Agency ”.
- (7) Section 25 (basis on which the chief inspector may determine questions) shall cease to have effect.
- (8) In section 27(1) (interpretation of terms)—
- (a) after the definition of the expression “alkali works” there shall be inserted—

“The expression “the appropriate Agency” means—

    - (a) in relation to England and Wales, the Environment Agency;

and

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- (b) in relation to Scotland, the Scottish Environment Protection Agency:”; and
- (b) the definitions of the expressions “chief inspector” and “inspector” shall be omitted.
- (9) In paragraph (b) of section 28 (application to Scotland)—
- (a) the words “other than offences under subsection four of section twelve of this Act”,
- (b) in sub-paragraph (ii) (prosecution not to be instituted without consent) the words from “without the consent” to “direct, nor”, and
- (c) sub-paragraph (iii) (person taking proceedings presumed to be inspector), shall cease to have effect.

**Marginal Citations**

**M1** 1906 c. 14.

*The Statistics of Trade Act 1947*

- 2 In the <sup>M2</sup>Statistics of Trade Act 1947, after section 9 (restrictions on disclosure of information) there shall be inserted—

**“9A Exceptions from section 9.**

- (1) Nothing in section nine of this Act shall prevent or penalise the disclosure by the Secretary of State of information obtained under this Act—
- (a) to the Environment Agency or the Scottish Environment Protection Agency; or
- (b) to an officer of either of those Agencies authorised by that Agency to receive the information.
- (2) A person to whom information is disclosed in pursuance of the last foregoing subsection shall not use the information for any purpose other than the purposes of any functions of the Agency in question.”

**Marginal Citations**

**M2** 1947 c. 39.

*The Rivers (Prevention of Pollution) (Scotland) Act 1951*

- 3 (1) The <sup>M3</sup>Rivers (Prevention of Pollution) (Scotland) Act 1951 shall be amended in accordance with the following provisions of this paragraph.
- (2) Part II (river purification boards) (so far as unrepealed) and section 17 (duties of river purification authorities) shall cease to have effect.
- (3) In section 18 (provision and obtaining of information)—
- (a) in subsection (1) (power to obtain information)—

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- (i) for the word “them” in each place where it occurs there shall be substituted the word “it”;
    - (ii) for the words “a river purification authority” there shall be substituted the words “SEPA”; and
    - (iii) the words “of their area”, “in their area” (where first occurring) and “in their area or any part thereof” shall cease to have effect;
  - (b) in subsection (2) (Secretary of State’s power to give directions) for the words “any river purification authority” and “the authority” there shall be substituted the words “SEPA”, and for the word “them” there shall be substituted the word “it”;
  - (c) in subsection (3) (duty to provide reasonable facilities for inspection of records)—
    - (i) for the words “Every river purification authority” and “the river purification authority” there shall be substituted the words “SEPA”;
    - (ii) for the word “them” there shall be substituted the word “it”;
    - (iii) the words “in their area” and the words from “whose” to “authority” where it next occurs shall cease to have effect; and
  - (d) in subsection (6) (interpretation of “stream”) for the words “the river purification authority’s” there shall be substituted the words “SEPA’s”.
- (4) In section 19 (power to take samples of effluents)—
- (a) in subsection (1) (power to obtain and take away samples of water from any stream or effluent)—
    - (i) for the words “A river purification authority” there shall be substituted the words “SEPA”; and
    - (ii) the words “in the area of the authority” shall cease to have effect; and
  - (b) in subsection (3) (interpretation of “stream”) for the words “the river purification authority’s” there shall be substituted the words “SEPA’s”.
- (5) In section 35 (interpretation)—
- (a) the definitions of “river purification authority”, “river purification board” and “river purification board area” shall cease to have effect; and
  - (b) there shall be inserted at the appropriate place—

““SEPA” means the Scottish Environment Protection Agency;”.

#### Marginal Citations

M3 1951 c. 66.

#### *The Public Records Act 1958*

- 4 In the First Schedule to the <sup>M4</sup>Public Records Act 1958 (definition of public records) in Part II of the Table at the end of paragraph 3 (organisations whose records are public records) there shall be inserted at the appropriate place the entry— “ The Environment Agency. ”.

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**Marginal Citations**

**M4** 1958 c. 51.

*The Opencast Coal Act 1958*

- 5 (1) In section 7(8) of the <sup>M5</sup>Opencast Coal Act 1958 (definitions etc. for the purposes of section 7) in paragraph (i) of the definition of “statutory water undertakers” for the words “National Rivers Authority” there shall be substituted the words “Environment Agency”.
- (2) In section 52(3) of that Act (general application to Scotland) for the words “a river purification authority within the meaning of the <sup>M6</sup>Rivers (Prevention of Pollution) (Scotland) Act 1951” there shall be substituted the words “the Scottish Environment Protection Agency”.

**Marginal Citations**

**M5** 1958 c. 69.

**M6** 1951 c. 66.

*The Rivers (Prevention of Pollution) (Scotland) Act 1965*

- 6 In section 10 of the <sup>M7</sup>Rivers (Prevention of Pollution) (Scotland) Act 1965 (samples of effluent)—
- (a) in subsection (2)—
- (i) for the words “A river purification authority” there shall be substituted the words “the Scottish Environment Protection Agency (in this section referred to as “SEPA”)”; and
- (ii) for the words “the river purification authority’s” there shall be substituted the words “SEPA’s”; and
- (b) in subsections (3) to (5), for the words “the river purification authority”, in each place where they occur, and “Every river purification authority” there shall be substituted the words “SEPA”.

**Marginal Citations**

**M7** 1965 c. 13.

*The Nuclear Installations Act 1965*

- 7 (1) In section 3 of the <sup>M8</sup>Nuclear Installations Act 1965, after subsection (1) (grant of nuclear site licences) there shall be inserted—
- “(1A) The Health and Safety Executive shall consult the appropriate Agency before granting a nuclear site licence in respect of a site in Great Britain.”
- (2) In subsection (3) of that section (consultation with certain bodies), in paragraph (b), the words “the National Rivers Authority,” shall cease to have effect.

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(3) After subsection (6) of that section (variation of nuclear site licences) there shall be inserted—

“(6A) The Health and Safety Executive shall consult the appropriate Agency before varying a nuclear site licence in respect of a site in Great Britain, if the variation relates to or affects the creation, accumulation or disposal of radioactive waste, within the meaning of the <sup>M9</sup>Radioactive Substances Act 1993.”

**Marginal Citations**

**M8** 1965 c. 57.

**M9** 1993 c. 12.

8 In section 4 of that Act (attachment of conditions to licences) after subsection (3) there shall be inserted—

“(3A) The Health and Safety Executive shall consult the appropriate Agency—

(a) before attaching any condition to a nuclear site licence in respect of a site in Great Britain, or

(b) before varying or revoking any condition attached to such a nuclear site licence,

if the condition relates to or affects the creation, accumulation or disposal of radioactive waste, within the meaning of the <sup>M10</sup>Radioactive Substances Act 1993.”

**Marginal Citations**

**M10** 1993 c. 12.

9 In section 5 of that Act (revocation and surrender of licences) after subsection (1) there shall be inserted—

“(1A) The Health and Safety Executive shall consult the appropriate Agency before revoking a nuclear site licence in respect of a site in Great Britain.”

10 In section 26 (interpretation) in subsection (1), there shall be inserted at the appropriate place—

““the appropriate Agency” means—

(a) in the case of a site in England or Wales, the Environment Agency;

(b) in the case of a site in Scotland, the Scottish Environment Protection Agency;”.

*The Parliamentary Commissioner Act 1967*

11 In Schedule 2 to the <sup>M11</sup>Parliamentary Commissioner Act 1967 (departments and authorities subject to investigation)—

- (a) there shall be inserted at the appropriate places the entries—
- (i) “ Environment Agency ”; and
- (ii) “ Scottish Environment Protection Agency ”;

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- (b) after note 1, there shall be inserted—
- “1A The reference to the Environment Agency is a reference to that Agency in relation to all its functions other than its flood defence functions, within the meaning of the <sup>M12</sup>Water Resources Act 1991.”; and
- (c) there shall be omitted—
- (i) the entry relating to the National Rivers Authority; and
- (ii) the note 9 inserted by paragraph 11 of Schedule 1 to the <sup>M13</sup>Water Act 1989 (which relates to that Authority).

**Marginal Citations**

- M11** 1967 c. 13.  
**M12** 1991 c. 57.  
**M13** 1989 c. 14.

*The Sewerage (Scotland) Act 1968*

- 12 (1) In section 38(3) of the <sup>M14</sup>Sewerage (Scotland) Act 1968 (duty of Secretary of State to consult on proposed extension of Part II to non-trade effluents)—
- (a) after the word “consult” where it first occurs there shall be inserted the words “ the Scottish Environment Protection Agency and ”; and
- (b) the words “river purification authorities,” shall cease to have effect.
- (2) In section 59(1) of that Act (interpretation) the definition of “river purification authority” shall cease to have effect.

**Marginal Citations**

- M14** 1968 c. 47.

*The Local Authorities (Goods and Services) Act 1970*

- 13 The <sup>M15</sup>Local Authorities (Goods and Services) Act 1970 (supply of goods and services by local authorities to public bodies) shall have effect as if the Agency and SEPA were each both a local authority and a public body for the purposes of that Act other than section 2(2) (accounting requirements in relation to local authority agreements entered into in pursuance of section 1).

**Marginal Citations**

- M15** 1970 c. 39.

*The Agriculture Act 1970*

- 14 (1) The <sup>M16</sup>Agriculture Act 1970 shall be amended in accordance with the following provisions of this paragraph.
- (2) In section 92(1) (provision of flood warning systems)—

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- (a) for the words from the beginning to “may” where it first occurs there shall be substituted the words “ The Scottish Environment Protection Agency may ”;
  - (b) the words “for their area” and “both within (and in the case of a river purification board) outwith, that area,” shall cease to have effect;
  - (c) in sub-paragraph (i) of the proviso—
    - (i) for the words “a river purification board” there shall be substituted the words “ the Scottish Environment Protection Agency ”;
    - (ii) for the word “them” there shall be substituted the word “ it ”; and
    - (iii) for the words “that board” there shall be substituted the words “ the Agency ”; and
  - (d) in sub-paragraph (ia) of the proviso for the words following “exercise” to “shall” there shall be substituted the words “ , the Agency shall ”.
- (3) In section 92(2)—
- (a) in paragraph (a)(iii) for the words “the authority providing the system” there shall be substituted the words “ the Scottish Environment Protection Agency ”;
  - (b) paragraph (c) (definition of “river purification board”) shall cease to have effect.
- (4) In section 94 (co-operation with other persons as regards flood warning systems)—
- (a) in subsection (1) for the words following “warning system” to “may” where it first occurs there shall be substituted the words “ the Scottish Environment Protection Agency may ” and for the words following “belonging to the” to “for” there shall be substituted the words “ Agency for ”;
  - (b) in subsection (2) for the words from the beginning to “may” and for the words following “apparatus of” there shall be substituted the words “ The Agency may ” and “ the Agency ” respectively.
- (5) In section 98 (extent of Part VI)—
- (a) for the words from the beginning to “England” there shall be substituted the words “ The Scottish Environment Protection Agency ”;
  - (b) for the words “section 92(1)(b)” there shall be substituted the words “ section 92(1) ”; and
  - (c) for the words “the National Rivers Authority” there shall be substituted the words “ the Environment Agency ”.

**Marginal Citations**

**M16** 1970 c. 40.

*The Prevention of Oil Pollution Act 1971*

- 15 (1) The <sup>M17</sup>Prevention of Oil Pollution Act 1971 shall be amended in accordance with the following provisions of this paragraph.
- (2) After section 11 (duty to report discharge of oil into waters of harbours) there shall be inserted—

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**“11A Certain provisions not to apply where a discharge or escape is authorised under Part I of the Environmental Protection Act 1990.**

(1) The provisions of sections 2(1) and (2A), 3(1) and 11(1) of this Act shall not apply to any discharge which is made under, and the provisions of section 11(1) of this Act shall not apply to any escape which is authorised by, an authorisation granted under Part I of the <sup>M18</sup>Environmental Protection Act 1990.

(2) This section does not extend to Northern Ireland.”

(3) In section 25(1) (power to extend certain provisions of the Act to the Isle of Man etc.), after the words “other than section 3” there shall be inserted the word “ , 11A ”.

**Marginal Citations**

M17 1971 c. 60.

M18 1990 c. 8.

PROSPECTIVE

*The Town and Country Planning (Scotland) Act 1972*

F116 .....

**Textual Amendments**

F1 Sch. 22 para. 16 repealed (27.5.1997) by 1997 c. 11, ss. 3, 6(2), Sch. 1 Pt. I (with s. 5, Sch. 3)

*The Local Government Act 1972*

17 In section 223 of the <sup>M19</sup>Local Government Act 1972 (which includes provision for authorised members or officers of the National Rivers Authority to conduct certain magistrates’ court proceedings on its behalf) in subsection (2)—

- (a) after the words “joint authority” there shall be inserted the word “ and ”; and
- (b) the words “and the National Rivers Authority” shall cease to have effect.

**Marginal Citations**

M19 1972 c. 70.

*The Local Government Act 1974*

18 In section 25(1) of the <sup>M20</sup>Local Government Act 1974 (authorities subject to investigation by Local Commissioners), for paragraph (d) there shall be substituted—



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“(d) in relation to the flood defence functions of the Environment Agency, within the meaning of the <sup>M21</sup>Water Resources Act 1991, the Environment Agency and any regional flood defence committee.”

**Marginal Citations**

**M20** 1974 c. 7.

**M21** 1991 c. 57.

*The Control of Pollution Act 1974*

- 19 (1) Section 5 of the <sup>M22</sup>Control of Pollution Act 1974 (licences to dispose of waste) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (3) (duty of recipient of application for licence where planning permission is in force)—
- (a) for the words “Where a disposal authority receives an application” there shall be substituted the words “ Where an application has been received ”; and
- (b) for the words “the authority”, where first occurring, there shall be substituted the words “ the appropriate Agency ” and, where secondly occurring, there shall be substituted the words “ that Agency ”.
- (3) In subsection (4) (duty of disposal authority to refer to National Rivers Authority etc proposals to issue licences)—
- (a) for the words “a disposal authority” there shall be substituted the words “ the appropriate Agency ”;
- (b) for the words “the authority” there shall be substituted the words “ that Agency ”;
- (c) for paragraph (a), there shall be substituted—
- “(a) to refer the proposal to any collection authority whose area includes any part of the relevant land; and”;
- (d) in paragraph (b), for the words “the disposal authority”, in both places where they occur, there shall be substituted the words “ that Agency ”; and
- (e) the words following paragraph (b) (reference of proposal to Secretary of State in certain cases) shall cease to have effect.
- (4) Subsection (5) (separate provision for Scotland) shall cease to have effect.

**Marginal Citations**

**M22** 1974 c. 40.

- 20 (1) Section 6 of that Act (provisions supplementary to section 5) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (2) (conditions which may be included in disposal licences)—
- (a) for the words “the disposal authority which issues it” there shall be substituted the words “ the appropriate Agency ”; and
- (b) for the words “the authority” there shall be substituted the words “ that Agency ”.

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- (3) In subsection (3) (offence of contravening a licence condition without reasonable excuse) for the words “the disposal authority which issued the licence” there shall be substituted the words “ the Environment Agency ”.
- (4) In subsection (4) (duty of each disposal authority to maintain registers etc)—
- (a) for the words “each disposal authority” there shall be substituted the words “ the Environment Agency and of SEPA ”;
  - (b) for paragraph (a) there shall be substituted—
    - “(a) to maintain a register containing copies of all disposal licences which are for the time being in force in respect of land in England and Wales or, as the case may be, Scotland;”
    - and
  - (c) in paragraph (c), for the words “the authority” there shall be substituted the words “ that Agency ”.
- (5) In subsection (5) (applications deemed to be refused if not granted within two months of receipt)—
- (a) for the words “a disposal authority receives an application duly made to it for a disposal licence” there shall be substituted the words “ a duly made application for a disposal licence was received ”;
  - (b) for the words “the authority”, in the first two places where they occur, there shall be substituted the words “ the appropriate Agency ”; and
  - (c) for the words “the authority”, wherever else occurring, there shall be substituted the words “ that Agency ”.
- 21 (1) Section 7 of that Act (variation of conditions and revocation of licences) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (modification of conditions of disposal licences issued by disposal authorities)—
- (a) the words “issued by a disposal authority” shall be omitted; and
  - (b) for the words “the authority”, where first occurring, there shall be substituted the words “ the appropriate Agency ” and, wherever else occurring, there shall be substituted the words “ that Agency ”.
- (3) In subsection (2) (application of section 5(4))—
- (a) the words “or, in relation to Scotland, subsection (5)” shall cease to have effect; and
  - (b) for paragraphs (a) and (b) there shall be substituted—
    - “(a) the Environment Agency or SEPA, as the case may be, may postpone the reference in pursuance of the said subsection (4) so far as it considers that by reason of an emergency it is appropriate to do so; and
    - (b) the Environment Agency or SEPA, as the case may be, may disregard any collection authority for the purposes of the preceding provisions of this subsection in relation to a modification which, in the opinion of that Agency, will not affect that authority.”
- (4) In subsection (4) (revocation of disposal licences issued by disposal authorities)—
- (a) the words “issued by a disposal authority” shall be omitted;

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- (b) for the words “the authority”, where first occurring, there shall be substituted the words “ the appropriate Agency ” and, in the other place where they occur, there shall be substituted the words “ that Agency ”.
- 22 (1) Section 8 of that Act (transfer and relinquishment of licences) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (transfer of licences)—
- (a) for the words “the authority which issued the licence” there shall be substituted the words “ the appropriate Agency ”; and
- (b) for the words “the authority”, in both places where they occur, there shall be substituted the words “ that Agency ”.
- (3) In subsection (4) (cancellation of licences)—
- (a) for the words “the authority which issued it” there shall be substituted the words “ the appropriate Agency ”; and
- (b) for the words “the authority”, in the other place where they occur, there shall be substituted the words “ that Agency ”.
- 23 (1) Section 9 of that Act (supervision of licensed activities) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (duties of the authority which issued the licence) for the words “the authority which issued the licence” there shall be substituted the words “ the appropriate Agency ”.
- (3) In subsection (2) (powers of entry of authorised officers to carry out works in an emergency)—
- (a) for the words “a disposal authority” there shall be substituted the words “ the Environment Agency or SEPA, as the case may be, ”; and
- (b) for the words “the authority”, wherever occurring, there shall be substituted the words “ that Agency ”.
- (4) In subsection (3) (recovery of certain expenditure from licence holders)—
- (a) for the words “a disposal authority” there shall be substituted the words “ the Environment Agency or SEPA ”; and
- (b) for the words “the authority” there shall be substituted the word “ it ”.
- (5) In subsection (4) (breach of conditions of licences)—
- (a) for the words “a disposal authority” there shall be substituted the words “ the appropriate Agency ”;
- (b) the words “issued by the authority” shall be omitted; and
- (c) for the words “the authority”, wherever else occurring, there shall be substituted the words “ that Agency ”.
- 24 (1) Section 10 of that Act (appeals to Secretary of State from decisions with respect to licences) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (duty of disposal authority concerned to implement Secretary of State’s determination) for the words “the disposal authority concerned” there shall be substituted the words “ the appropriate Agency ”.
- (3) In subsection (3) (cases where the decision under appeal is effective pending the determination of the appeal)—

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- (a) for the words “to a decision of a disposal authority” there shall be substituted the words “ if the decision in question is a decision ”;
- (b) for the words “in the opinion of the authority” there shall be substituted the words “ in the opinion of the body making the decision in question ”;
- (c) for the words “the authority acted” there shall be substituted the words “ that body acted ”; and
- (d) in paragraph (b), for the words “the authority” there shall be substituted the words “ the appropriate Agency ”.
- 25 In section 11 of that Act (special provision for land occupied by disposal authorities: resolutions etc) subsections (1) to (11) shall cease to have effect.
- 26 (1) Section 16 of that Act (removal of waste deposited in breach of licensing provisions) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (power of disposal or collection authority to serve notice on occupier of land in its area) for the words from “in the area” to “the authority may” there shall be substituted the words “ in contravention of section 3(1) of this Act, any authority to which this section applies may ”.
- (3) After subsection (7) there shall be added—
- “(8) The authorities to which this section applies are—
- (a) the appropriate Agency;
- (b) any collection authority in whose area the land mentioned in subsection (1) above is situated.”
- 27 In section 30 of that Act (interpretation of Part I) in subsection (1)—
- (a) the following definition shall be inserted at the appropriate place—
- ““the appropriate Agency” means—
- (a) in relation to England and Wales, the Environment Agency;
- (b) in relation to Scotland, SEPA;”;
- (b) for the definition of “waste” there shall be substituted—
- ““waste” has the same meaning as it has in Part II of the <sup>M23</sup>Environmental Protection Act 1990 by virtue of section 75(2) of that Act;”;
- and
- (c) the words from “and for the purposes” to the end (which provide a presumption that anything discarded is waste unless the contrary is proved) shall cease to have effect.

#### Commencement Information

**II** Sch. 22 para. 27 not in force at Royal Assent see s. 125(3); Sch. 22 para. 27(a) in force at 1.4.1996 by [S.I. 1996/186, art 3](#)

#### Marginal Citations

**M23** 1990 c. 43.

- 28 In section 62(2)(a) of that Act (exceptions to restrictions on the operation of loudspeakers in streets), as it has effect in relation to England and Wales, for the words “National Rivers Authority” there shall be substituted the words “ Environment Agency ”.

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- 29 (1) The <sup>M24</sup>Control of Pollution Act 1974, as it has effect in relation to Scotland, shall be amended in accordance with the following provisions of this paragraph.
- (2) Subject to the amendments made by the following provisions of this paragraph, for the words “a river purification authority”, “the river purification authority”, “river purification authority”, “river purification authorities”, “the river purification authorities”, “each river purification authority” and “any river purification authority”, in each place where they occur in the undernoted provisions, there shall be substituted the words “SEPA ”
- section 30A(2)(a) and (3);
  - section 30C(1);
  - section 30D;
  - section 31(4)(d) and (6);
  - section 31A(2);
  - section 33(1);
  - sections 34 to 39;
  - section 41;
  - sections 46 to 51;
  - section 96(3); and
  - Schedule 1A.
- (3) In section 30A(2)(a) (Secretary of State to deposit maps showing fresh-water limits of every relevant river or watercourse) the words “in the area of that authority” shall cease to have effect.
- (4) In section 30C (water quality objectives)—
- (a) in subsection (1) (Secretary of State to establish water quality objectives), the words “within the area of that authority” shall cease to have effect;
  - (b) in subsection (3)(b) (Secretary of State to review water quality objectives) for the words “the river purification authority on which that notice has been served” there shall be substituted the words “SEPA ”;
  - (c) in subsection (4) (Secretary of State to give notice and consider representations when reviewing water quality objectives)—
    - (i) the words “in the area of a river purification authority” shall cease to have effect; and
    - (ii) in paragraph (a) for the words “that authority” there shall be substituted the words “SEPA ”;
  - (d) in subsection (5)(b) (form of notice to be given by the Secretary of State when varying water quality objectives) for the words “the authority” there shall be substituted the words “SEPA ”; and
  - (e) in subsection (6) (Secretary of State to serve further notice where water quality objectives remain unchanged)—
    - (i) the words “in the area of a river purification authority” shall cease to have effect; and
    - (ii) for the words “that authority” there shall be substituted the words “SEPA ”.
- (5) In section 30E (consultation and collaboration)—
- (a) for the word “their” there shall be substituted the word “its ”;

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- (b) for the words “river purification authorities” there shall be substituted the words “SEPA ”; and
  - (c) for the words “National Rivers Authority” there shall be substituted the words “ Environment Agency ”.
- (6) In section 31 (control of pollution of rivers and coastal waters etc.)—
- (a) in subsection (4)(b) (Secretary of State power to restrict or prohibit prescribed activities in designated areas) for the words “the river purification authority in whose area the place is situated” there shall be substituted the words “SEPA ”; and
  - (b) in subsection (6) (power to make byelaws to prohibit or regulate prescribed activities)—
    - (i) for the words “the authority” there shall be substituted the word “ it ”; and
    - (ii) the words “in its area” shall cease to have effect.
- (7) Section 31D (powers of entry in relation to agreements under section 31B) shall cease to have effect.
- (8) In section 33(1) (power to make byelaws regulating or prohibiting sanitary appliances on vessels)—
- (a) for the words “the authority” where they first occur there shall be substituted the word “ it ”; and
  - (b) the words “in the area of the authority” shall cease to have effect.
- (9) In section 34 (consents for discharges of trade and sewage effluent etc.)—
- (a) for the words “the authority” and “the authority’s” in each place where they occur (other than the last reference in subsection (2)) there shall be substituted the words “SEPA ” and “SEPA’s ” respectively;
  - (b) in subsection (2) (disposal of application)—
    - (i) for the words “a river purification authority to which an application for consent is” there shall be substituted the words “SEPA, in relation to an application for consent ”;
    - (ii) for the word “three” there shall be substituted the word “ four ”; and
    - (iii) for the words “the authority shall be deemed to have refused the consent” there shall be substituted the words “ the applicant may treat the consent applied for as having been refused ”; and
  - (c) in subsection (3) (consent not to relate to discharges which occurred prior to consent) the words “in its area” shall cease to have effect.
- (10) In the following provisions, for the words “an authority”, “any authority”, “the authority”, “the authorities” and “the relevant river purification authority” in each place where they occur there shall be substituted the words “SEPA ”
- sections 35 to 39;
  - section 41;
  - sections 46 to 49; and
  - Schedule 1A, paragraph 2.
- (11) In section 36 (provisions supplementary to sections 34 and 35)—
- (a) in subsection (1), after the word “shall” there shall be inserted the words “ , subject to subsections (2A) and (2B) below, ”;

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(b) after subsection (2) there shall be inserted the following subsections—

“(2A) A person who proposes to make, or has made, an application to SEPA for consent in pursuance of section 34 of this Act may apply to the Secretary of State within a prescribed period for a certificate providing that subsection (1) above shall not apply to that application.

(2B) If the Secretary of State is satisfied that—

- (a) it would be contrary to the interests of national security; or
- (b) it would prejudice to an unreasonable degree the commercial interests of any person, not to issue a certificate applied for under subsection (2A) above, he may issue the certificate and, if he does so, subsection (1) above shall not apply to the application specified in the certificate.”; and

(c) in subsection (6), for the word “three” there shall be substituted the word “four”.

(12) In section 37(1) (revocation of consents and alteration and imposition of conditions), for the words from the beginning to “consent” in the second place where it occurs there shall be substituted the words “SEPA may from time to time review any consent given in pursuance of section 34 of this Act”.

(13) In section 38 (restriction as to variation and revocation of consent and of previous variation), in each of subsections (1) and (2), for the word “two” there shall be substituted the word “four”.

(14) After section 38 there shall be inserted—

**“38A General review of consents.**

(1) If it appears appropriate to the Secretary of State to do so he may at any time direct SEPA to review—

- (a) the consents given under section 34 of this Act; or
- (b) any description of such consents,

and the conditions (if any) to which those consents are subject.

(2) A direction given by virtue of subsection (1) above—

- (a) shall specify the purpose for which; and
- (b) may specify the manner in which,

the review is to be conducted.

(3) After carrying out the review, SEPA shall submit to the Secretary of State its proposals (if any) for—

- (a) the modification of the conditions of any consent reviewed pursuant to the direction; or
- (b) in the case of any such consent which is unconditional, subjecting the consent to conditions.

(4) Where the Secretary of State has received any proposals under subsection (3) above in relation to any consent he may, if it appears appropriate to him to do so, direct SEPA, in relation to that consent—

- (a) to make modifications of the conditions of the consent; or

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- (b) in the case of an unconditional consent, to subject the consent to conditions.
- (5) A direction given by virtue of subsection (4) above may direct SEPA to do, in relation to any such consent, only—
  - (a) any such thing as SEPA has proposed should be done in relation to that consent; or
  - (b) any such thing with such modifications as appear to the Secretary of State to be appropriate.”.
- (15) In section 39 (appeals to Secretary of State)—
  - (a) in subsection (1), in each of paragraphs (b) and (c), for the words “the preceding section” there shall be substituted the words “ section 38 of this Act ”;
  - (b) in subsection (5), for the words “terms and period as are” there shall be substituted the words “ period as is ”;
  - (c) after that subsection there shall be inserted the following subsections—
    - “(5A) Subject to subsection (5B) below, where a question is referred to the Secretary of State in pursuance of subsection (1)(b) above, the revocation of the consent or, as the case may be, the modification of the conditions of the consent or the provision that the consent (having been unconditional) shall be subject to conditions, shall not take effect while the reference is pending.
    - (5B) Subsection (5A) above shall not apply to a reference where the notice effecting the revocation, modification or provision in question includes a statement that in the opinion of SEPA 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.
    - (5C) Where the reference falls within subsection (5B) above, if, on the application of the holder or former holder of the consent, the Secretary of State (or other person determining the question referred) determines that SEPA acted unreasonably in excluding the application of subsection (5A) above, then—
      - (a) if the reference is still pending at the end of the day on which that determination is made, subsection (5A) above shall apply to the reference from the end of that day; and
      - (b) the holder or former holder of the consent shall be entitled to recover compensation from SEPA 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 a single arbiter appointed, in default of agreement between the parties concerned, by the Secretary of State on the application of any of the parties.”; and
  - (d) at the end there shall be added—



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- “(7) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals).
- (8) In this section “the holder”, in relation to a consent, is the person who has the consent.”
- (16) Section 40(4) (transitional provisions relating to consents) shall cease to have effect.
- (17) In section 41(1) (maintenance of registers)—
- (a) after the words “prescribed particulars of” there shall be inserted the words “or relating to”;
  - (b) the following provisions shall cease to have effect—
    - (i) in paragraph (c) (information contained in registers) the words “(except section 40(4))”;
    - (ii) in paragraph (d) (duty to maintain registers of samples of effluent), sub-paragraph (ii); and
    - (iii) paragraph (e) (duty to register certain notices);
  - (c) there shall be added at the end the following paragraphs—
    - “(f) enforcement notices served under section 49A of this Act;
    - (g) directions given by the Secretary of State in relation to SEPA’s functions under this Part of this Act;
    - (h) convictions, for offences under this Part of this Act, of persons who have the benefit of consents under section 34 of this Act;
    - (j) information obtained or furnished in pursuance of conditions of such consents;
    - (k) works notices under section 46A of this Act;
    - (l) appeals under section 46C of this Act;
    - (m) convictions for offences under section 46D of this Act; and
    - (n) such other matters relating to the quality of water as may be prescribed.”
- (18) In section 41(2) (registers to be available for inspection by, and facilities for obtaining copies of entries to be afforded to, the public), after paragraph (b) there shall be added the words— “ and, for the purposes of this subsection, places may be prescribed 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. ”
- (19) At the end of section 41 there shall be added the following subsection—
- “(3) The Secretary of State may give SEPA 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) of this section or which, by virtue of section 42A or 42B of this Act, ought to have been excluded from the registers.”
- (20) For section 42, there shall be substituted the following sections—

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**“42A Exclusion from registers of information affecting national security.**

- (1) No information shall be included in a register kept or maintained by SEPA under section 41 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 purposes of securing the exclusion from registers of information to which subsection (1) of this section applies, give SEPA 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 to be referred to the Secretary of State in pursuance of paragraph (b) of this subsection shall be included in any such register until the Secretary of State determines that it should be so included.
- (3) SEPA shall notify the Secretary of State of any information it excludes from a register in pursuance of directions under subsection (2) of this section.
- (4) A person may, as respects any information which appears to him to be information to which subsection (1) of this section 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 SEPA 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.

**42B 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 SEPA under section 41 of this Act, if and so long as the information—
  - (a) is, in relation to him, commercially confidential; and
  - (b) is not required to be included in the register in pursuance of directions under subsection (7) of this section;
 but information is not commercially confidential for the purposes of this section unless it is determined under this section to be so by SEPA, or, on appeal, by the Secretary of State.
- (2) Where information is furnished to SEPA for the purpose of—
  - (a) an application for a consent under section 34 of this Act;
  - (b) complying with any condition of such a consent; or
  - (c) complying with a notice under section 93 of this Act,
 then, if the person furnishing it applies to SEPA to have the information excluded from any register kept or maintained by SEPA under section 41 of this Act, on the ground that it is commercially confidential (as regards

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himself or another person), SEPA shall determine whether the information is or is not commercially confidential.

- (3) A determination under subsection (2) of this section must be made within the period of fourteen days beginning with the date of the application and if SEPA 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 SEPA that any information (other than information furnished in circumstances within subsection (2) of this section) which has been obtained by SEPA under or by virtue of any provision of any enactment might be commercially confidential, SEPA 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 SEPA under section 41 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 SEPA for the purpose of justifying any such objection;and, if any representations are made, SEPA shall, having taken the representations into account, determine whether the information is or is not commercially confidential.
- (5) Where, under subsection (2) or (4) of this section, SEPA 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 pending the final determination or withdrawal of the appeal.
- (6) Subsections (2), (4) and (7) of section 49B of this Act shall apply in relation to appeals under subsection (5) of this section; but
  - (a) subsection (4) 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) of this section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).
- (7) The Secretary of State may give SEPA directions as to specified information, or descriptions of information, which the public interest requires to be included in registers kept or maintained by SEPA under section 41 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 SEPA for the information to remain excluded from the register on the ground that it

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is still commercially confidential and SEPA shall determine whether or not that is the case.

- (9) Subsections (5) and (6) of this section shall apply in relation to a determination under subsection (8) of this section as they apply in relation to a determination under subsection (2) or (4) of this section.
- (10) The Secretary of State may prescribe the substitution (whether in all cases or in such classes or descriptions of case as may be prescribed) for the period for the time being specified in subsection (3) above of 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 register would prejudice to an unreasonable degree the commercial interests of that individual or person.”
- (21) In section 46 (operations to remedy or forestall pollution of water)—
- (a) in subsection (1)—
    - (i) at the beginning there shall be inserted the words “ Subject to subsection (1B) below, ”; and
    - (ii) the words “in its area” where they first occur and “in its area or elsewhere” shall cease to have effect;
  - (b) after subsection (1) there shall be inserted—
 

“(1A) In either case mentioned in subsection (1) of this section, SEPA 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 SEPA, to enter controlled waters.

(1B) Without prejudice to the power of SEPA to carry out investigations under subsection (1A) above, the power conferred by subsection (1) above to carry out operations shall be exercisable only in a case where—

    - (a) SEPA considers it necessary to carry out forthwith any operations falling within paragraph (a) or (b) of subsection (1) above; or
    - (b) it appears to SEPA, after reasonable inquiry, that no person can be found on whom to serve a works notice under section 46A of this Act.”;
  - (c) in subsection (2) after the words “any operations” there shall be inserted the words “ or investigations ”;
  - (d) in subsection (3)(b)—
    - (i) after the words “any operations” there shall be inserted the words “ or investigations ”; and
    - (ii) after the words “an abandoned mine” there shall be inserted the words “ or an abandoned part of a mine ”; and
  - (e) after subsection (3) there shall be inserted—

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“(3A) Subsection (3)(b) of this section 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) Subsections (5) and (6) of section 30J above shall apply in relation to subsections (3) and (3A) above as they apply in relation to subsections (3) and (4) of that section.”.

(22) After section 46 there shall be inserted the following sections—

**“46A Notices requiring persons to carry out anti-pollution operations.**

(1) Subject to the following provisions of this section, where it appears to SEPA 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, SEPA 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 SEPA, 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 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, 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, 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 SEPA by virtue of section 46(1B)(a) of this Act.

(4) Before serving a works notice on any person, SEPA shall reasonably endeavour to consult that person concerning the 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;

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- (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; and
  - (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 SEPA to require the carrying out of any operations which would impede or prevent the making of any discharge in pursuance of a consent given by SEPA by virtue of section 34 of this Act.
- (8) No works notice shall be served on any person requiring him to carry out any 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 (5) and (6) of section 30J of this Act shall apply in relation to subsections (8) and (9) above as they apply in relation to subsections (3) and (4) of that section.
- (11) Where SEPA—
- (a) carries out any such investigations as are mentioned in section 46(1A) of this Act, 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 SEPA as to whether or how it should exercise its powers under this section.

#### **46B Grant of, and compensation for, rights of entry etc.**

- (1) A works notice may require a person to carry out operations in relation to any land or waters notwithstanding that he is not entitled to carry out those operations.
- (2) Any person whose consent is required before any 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

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notice is served to comply with any requirements imposed by the works notice.

- (3) Before serving a works notice, SEPA 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, 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>M25</sup>Environmental Protection Act 1990 in relation to compensation under that section.
- (7) In this section—

“relevant land” means—

  - (a) any land or waters in relation to which the works notice in question requires, or may require, 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 46A of this Act.

#### **46C 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.

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- (4) Regulations under subsection (3) above may (among other things)—
- (a) include provisions comparable to those in section 290 of the <sup>M26</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 46A of this Act.
- (6) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals).

#### **46D Consequences of not complying with a works notice.**

- (1) If a person on whom SEPA 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, SEPA may do what that person was required to do and may recover from him any costs or expenses reasonably incurred by SEPA in doing it.
  - (4) If SEPA 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 with the requirements of a works notice, SEPA may take proceedings in any court of competent jurisdiction for the purpose of securing compliance with the notice.
  - (5) In this section “works notice” means a works notice under section 46A of this Act.”.
- (23) In section 47 (duty to deal with waste from vessels etc.)—
- (a) in subsection (1) (duty), the words “in its area” shall cease to have effect; and



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- (b) in subsection (2) (provision of facilities), the words “in the authority’s area” shall cease to have effect.
- (24) In section 48(1) (power to exclude unregistered vessels from rivers etc.) the words “in its area” shall cease to have effect.
- (25) In section 49 (deposit and vegetation in rivers etc) at the end there shall be added—
  - “(5) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals).”
- (26) After that section there shall be inserted—

**“49A Enforcement notices as respects discharge consents.**

- (1) If SEPA 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, it may serve on him a notice (an “enforcement notice”).
- (2) An enforcement notice shall—
  - (a) state that SEPA 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 SEPA 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, SEPA may take proceedings in any court of competent jurisdiction 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 SEPA directions as to whether it should exercise its powers under this section and as to the steps which must be taken.
- (6) In this section—
  - “relevant consent” means a consent for the purposes of section 30J(7)(a), 34 or 49(1) of this Act; and
  - “the holder”, in relation to a relevant consent, is the person who has the consent in question.

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 that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### **49B Appeals against enforcement notices.**

- (1) A person upon whom an enforcement notice has been served under section 49A of this Act may appeal to the Secretary of State.
  - (2) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc.).
  - (3) An appeal under this section shall, if and to the extent a requirement to do so is prescribed, be advertised in the manner prescribed.
  - (4) 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).
  - (5) On the determination of an appeal under this section, 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.
  - (6) The bringing of an appeal under this section shall not have the effect of suspending the operation of the notice appealed against.
  - (7) The period within which and the manner in which appeals under this section are to be brought and the manner in which they are to be considered shall be as prescribed.”
- (27) In section 50 (investigation of water pollution problems arising from closures of mines) the words “in its area” shall cease to have effect.
  - (28) Sections 53 (charges in respect of consents to certain discharges in Scotland), 54 (directions to the river purification authority), 55 (discharges by islands councils) and 56(4) (meaning of the area of a river purification authority) shall cease to have effect.
  - (29) In section 56(1) (interpretation of Part II), the following definition shall be inserted in the appropriate place in alphabetical order—  
 ““operations” includes works;”.
  - (30) In section 90(3) (establishment charges etc. in relation to Scotland), for the words from “a river” to the end there shall be substituted the words “SEPA”.
  - (31) Section 91(5)(a) (application of that section to Scotland) shall cease to have effect.
  - (32) In section 96(3) (local inquiries) the words from “but as if” to the end shall cease to have effect.
  - (33) In section 98 (interpretation of Part V), for paragraph (b) of the definition of “relevant authority” there shall be substituted —  
 “(b) in Scotland—  
 (i) as respects sections 91 and 92, a council constituted under section 2 of the <sup>M27</sup>Local Government etc. (Scotland) Act 1994; and  
 (ii) as respects this Part other than those sections, the Secretary of State, SEPA or a council constituted

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under section 2 of the Local Government etc. (Scotland) Act 1994.”.

(34) In section 104(1) (orders and regulations) the words “59” shall cease to have effect.

(35) In section 105 (interpretation etc.— general) there shall be inserted in the appropriate place—

““SEPA” means the Scottish Environment Protection Agency;”

#### Commencement Information

**I2** Sch. 22 para. 29 partly in force; Sch. 22 para. 29 not in force at Royal Assent see s. 125(3); Sch. 22 para. 29(1)(22) in force for specified purposes at 12.10.1995 by [S.I. 1995/2649](#), [art. 2\(j\)\(ii\)](#); Sch. 22 para. 29(1) in force at 1.4.1996 insofar as not already in force and Sch. 22 para. 29(2)-(20)(21)(a)(ii)(23)-(25)(27)-(35) in force at 1.4.1996 by [S.I. 1996/186](#), [art. 3](#); Sch. 22 para. 29(26) in force for S. at 1.1.2001 insofar as not already in force by [S.S.I. 2000/433](#), [art. 2](#)

#### Marginal Citations

**M24** 1974 c. 40.  
**M25** 1990 c. 43.  
**M26** 1936 c. 49.  
**M27** 1994 c. 39.

#### *The Health and Safety at Work etc. Act 1974*

- 30 (1) The <sup>M28</sup>Health and Safety at Work etc. Act 1974 (in this paragraph referred to as “the 1974 Act”) shall have effect in accordance with the following provisions of this paragraph.
- (2) The appropriate new Agency shall, in consequence of the transfer effected by virtue of section 2(2)(c) or, as the case may be, 21(2)(a) of this Act, be regarded for the purposes of Part I of the 1974 Act as the authority which is, by any of the relevant statutory provisions, made responsible in relation to England and Wales or, as the case may be, Scotland for the enforcement of the relevant enactments (and, accordingly, as the enforcing authority in relation to those enactments).
- (3) Neither the Agency nor SEPA shall have power to appoint inspectors under section 19 of the 1974 Act.
- (4) Sections 21 to 23 (improvement notices and prohibition notices) shall have effect in any case where the relevant statutory provision in question is any of the relevant enactments as if references in those sections to an inspector were references to the appropriate new Agency.
- (5) Section 27 (obtaining of information by the Commission etc) shall have effect in relation to the appropriate new Agency, in its relevant capacity, as it has effect in relation to the Health and Safety Commission (and not as it has effect in relation to an enforcing authority), except that the consent of the Secretary of State shall not be required to the service by the appropriate new Agency of a notice under subsection (1) of that section; and, accordingly, where that section has effect by virtue of this sub-paragraph—
- (a) any reference in that section to the Commission shall be construed as a reference to the appropriate new Agency;

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- (b) any reference to an enforcing authority shall be disregarded; and
  - (c) in subsection (3) of that section, the words from “and also” onwards shall be disregarded.
- (6) In section 28 (restrictions on disclosure of information)—
- (a) in paragraph (a) of subsection (3) (exception for disclosure of information to certain bodies) after the words “the Executive,” there shall be inserted the words “ the Environment Agency, the Scottish Environment Protection Agency, ”;
  - (b) in paragraph (c)(ii) of that subsection (exception for disclosure to officers of certain bodies) as it applies to England and Wales—
    - (i) the words “of the National Rivers Authority or”, and
    - (ii) the word “Authority,” (where next occurring),
 shall be omitted;
  - (c) for paragraph (c)(ii) of that subsection as it applies to Scotland there shall be substituted—
    - “(ii) an officer of a water undertaker, sewerage undertaker, sewerage authority or water authority who is authorised by that authority to receive it;”;
  - (d) paragraph (c)(iii) of that subsection (exception for disclosure to officers of river purification boards) shall cease to have effect;
  - (e) in subsection (4) (references to certain bodies to include references to officers or inspectors), after the words “the Executive” (in the first place where they occur) there shall be inserted the words “ the Environment Agency, the Scottish Environment Protection Agency, ”;
  - (f) in subsection (5) (information disclosed in pursuance of subsection (3) not to be used by recipient except for specified purposes)—
    - (i) in paragraph (a) (use for a purpose of the Executive etc) after the words “of the Executive or” there shall be inserted the words “ of the Environment Agency or of the Scottish Environment Protection Agency or ”;
    - (ii) in paragraph (b) as it applies to England and Wales (use for the purposes of certain bodies of information given to officers of those bodies), the words “the National Rivers Authority” shall be omitted;
    - (iii) in the said paragraph (b) as it applies to Scotland, for the words from the beginning to “in connection” there shall be substituted the words “ in the case of information given to an officer of a body which is a local authority, a water undertaker, a sewerage undertaker, a sewerage authority or a water authority the purposes of the body in connection ”.
- (7) In section 38 (restriction on institution of proceedings in England and Wales) after the words “except by an inspector or” there shall be inserted the words “ the Environment Agency or ”.
- (8) In this paragraph—
- “the appropriate new Agency” means—
    - (a) in relation to England and Wales, the Agency; and
    - (b) in relation to Scotland, SEPA;
 “relevant capacity”, in relation to the appropriate new Agency, means its capacity as the enforcing authority, for the purposes of Part I of the 1974

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Act, which is responsible in relation to England and Wales or, as the case may be, Scotland for the enforcement of the relevant enactments;

“the relevant enactments” means the <sup>M29</sup>Alkali, &c, Works Regulation Act 1906 and section 5 of the 1974 Act;

“the relevant statutory provisions” has the same meaning as in Part I of the 1974 Act.

**Marginal Citations**

**M28** 1974 c. 37.

**M29** 1906 c. 14.

*The House of Commons Disqualification Act 1975 and  
the Northern Ireland Assembly Disqualification Act 1975*

31 In Part II of Schedule 1 to the <sup>M30</sup>House of Commons Disqualification Act 1975 (bodies of which all members are disqualified for membership of the House of Commons) the following entries shall be inserted at the appropriate places—

- (a) “The Environment Agency.”;
- (b) “The Scottish Environment Protection Agency.”;

and the like insertions shall be made in Part II of Schedule 1 to the <sup>M31</sup>Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified for membership of the Northern Ireland Assembly).

**Marginal Citations**

**M30** 1975 c. 24.

**M31** 1975 c. 25.

*The Local Government (Scotland) Act 1975*

32 (1) The <sup>M32</sup>Local Government (Scotland) Act 1975 shall be amended in accordance with the following provisions.

(2) In section 16 (borrowing and lending by local authorities and certain other bodies)—

- (a) after the words “local authorities” there shall be inserted the word “ and ”;
- (b) the words “and river purification boards” shall cease to have effect.

(3) In Schedule 3 (further provision relating to borrowing and lending by local authorities and certain other bodies) in paragraph 28—

- (a) in sub-paragraph (1)—
  - (i) after the word “money” there shall be inserted the word “ and ”;
  - (ii) the words “or a river purification board,” shall cease to have effect;
- (b) in sub-paragraph (2) for sub-paragraph (a) there shall be substituted—  
“(a) a joint board; and”.

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**Marginal Citations**

**M32** 1975 c. 30.

*The Local Government (Miscellaneous Provisions) Act 1976*

- 33 In section 44 of the <sup>M33</sup>Local Government (Miscellaneous Provisions) Act 1976 (interpretation of Part I of that Act) after subsection (1A) (certain provisions of that Act, including section 16 (obtaining information about land), to have effect as if the Broads Authority were a local authority) there shall be inserted—

“(1B) Section 16 of this Act shall have effect as if the Environment Agency were a local authority.”.

**Marginal Citations**

**M33** 1976 c. 57.

*The Water (Scotland) Act 1980*

- 34 (1) The <sup>M34</sup>Water (Scotland) Act 1980 shall be amended in accordance with the following provisions of this paragraph.
- (2) In section 31(1) (consultation where limits of water supply adjoin any part of England) for paragraph (b) there shall be substituted—  
“ (b) the Scottish Environment Protection Agency.”
- (3) In section 33(3)(a) (notice of temporary discharge of water into watercourses)—  
(a) sub-paragraph (ii) and the preceding “and” shall cease to have effect ; and  
(b) at the end of the paragraph there shall be inserted—  
“and  
(ii) to the Scottish Environment Protection Agency.”
- (4) In section 109(1) (interpretation) the definitions of “river purification authority” and “river purification board” shall cease to have effect.
- (5) In Schedule 1—  
(a) in paragraph 2(ii) for the words following “section 17(2)” to the end there shall be substituted the words “ on the Scottish Environment Protection Agency ”;  
(b) in paragraph 11(ii) the words “and any river purification authority” shall cease to have effect and at the end there shall be added the words “ and on the Scottish Environment Protection Agency ”;  
(c) in paragraph 19 for the words following “any fishery district” to the words “any public undertakers” there shall be substituted the words “ any navigation authority exercising jurisdiction in relation to any watercourse from which water is proposed to be taken under the rights to be acquired, the Scottish Environment Protection Agency and any public undertakers ”.

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**Marginal Citations**

**M34** 1980 c. 45.

*The Criminal Justice (Scotland) Act 1980*

- 35 In Schedule 1 to the <sup>M35</sup>Criminal Justice (Scotland) Act 1980 (sufficiency of evidence by certificate in certain routine matters) in the entry relating to the <sup>M36</sup>Control of Pollution Act 1974—
- (a) for the words from “Section 31(1)” to “such waters etc)” there shall be substituted the words “ Section 30F (pollution offences) ”; and
  - (b) for the words “a river purification authority (within the meaning of that Act)” there shall be substituted the words “ the Scottish Environment Protection Agency ”.

**Marginal Citations**

**M35** 1980 c. 62.

**M36** 1974 c. 40.

*The Road Traffic Regulation Act 1984*

- 36 (1) In section 1 of the <sup>M37</sup>Road Traffic Regulation Act 1984 (traffic regulation orders outside Greater London) in subsection (1), after paragraph (f) (which allows a traffic regulation order to be made for preserving or improving the amenities of the area through which the road runs) there shall be added “or
- (g) for any of the purposes specified in paragraphs (a) to (c) of subsection (1) of section 87 of the Environment Act 1995 (air quality).”
- (2) In section 6 of that Act (orders similar to traffic regulation orders in Greater London) in subsection (1)(b) (which allows orders in Greater London to be made for equivalent purposes to those in section 1(1)(a) to (f) of that Act) for the words “(a) to (f)” there shall be substituted the words “ (a) to (g) ”.
- (3) In section 122(2) of that Act (matters to which, so far as practicable, regard is to be had by local authorities in exercising their functions under the Act) after paragraph (b) there shall be inserted—
- “(bb) the strategy prepared under section 80 of the Environment Act 1995 (national air quality strategy);”.

**Marginal Citations**

**M37** 1984 c. 27.

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*The Control of Pollution (Amendment) Act 1989*

- 37 (1) The <sup>M38</sup>Control of Pollution (Amendment) Act 1989 shall be amended in accordance with the following provisions of this paragraph.
- (2) In section 2 (registration of carriers)—
- (a) in subsection (3), without prejudice to the power of regulation authorities to impose a charge in respect of their consideration of any such application, paragraph (e) (power to require them to impose such charges) shall cease to have effect; and
- (b) after that subsection there shall be added—
- “(3A) Without prejudice to the generality of paragraphs (b) and (d) of subsection (3) above—
- (a) the power to prescribe a form under paragraph (b) of that subsection includes power to require an application to be made on any form of any description supplied for the purpose by the regulation authority to which the application is to be made; and
- (b) the power to impose requirements with respect to information under paragraph (d) of that subsection includes power to make provision requiring an application to be accompanied by such information as may reasonably be required by the regulation authority to which it is to be made.”
- (3) In section 4 (appeals to the Secretary of State against refusal of registration etc) after subsection (8) there shall be added—
- “(9) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals).”
- (4) In section 6 (seizure and disposal of vehicles used for illegal waste disposal) for subsection (6) there shall be substituted—
- “(6) Regulations under this section shall not authorise a regulation authority to sell or destroy any property or to deposit any property at any place unless—
- (a) the following conditions are satisfied, that is to say—
- (i) the authority have published such notice, and taken such other steps (if any), as may be prescribed for informing persons who may be entitled to the property that it has been seized and is available to be claimed; and
- (ii) the prescribed period has expired without any obligation arising under the regulations for the regulation authority to return the property to any person; or
- (b) the condition of the property requires it to be disposed of without delay.”
- (5) In section 7 (further enforcement provisions) in subsection (1) (which applies certain provisions of the <sup>M39</sup>Environmental Protection Act 1990) for the words “sections 68(3), (4) and (5), 69, 70 and 71” there shall be substituted the words “section 71”.
- (6) Subsection (2) of that section (disclosure of information between certain authorities) shall cease to have effect.



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(7) Subsection (8) of that section (which applies section 72 of the 1990 Act) shall cease to have effect.

(8) In section 9, for the definition of “regulation authority” there shall be substituted—

““regulation authority” means—

- (a) in relation to England and Wales, the Environment Agency; and
- (b) in relation to Scotland, the Scottish Environment Protection Agency;

and any reference to the area of a regulation authority shall accordingly be construed as a reference to any area in England and Wales or, as the case may be, in Scotland.”

#### Commencement Information

**I3** Sch. 22 para. 37 wholly in force at 1.4.1998; Sch. 22 para. 37 not in force at Royal Assent see s. 125(3); Sch. 22 para. 37(1)(4) in force at 21.9.1995 by S.I. 1995/1983, art. 3; Sch. 22 para. 37(2)(b) in force at 1.2.1996 by S.I. 1996/186, art 2; Sch. 22 para. 37(3)(5)-(8) in force at 1.4.1996 by S.I. 1996/186, art. 3; Sch. 22 para. 37(2) in force at 1.4.1998 by S.I. 1998/604, art. 2

#### Marginal Citations

**M38** 1989 c. 29.  
**M39** 1990 c. 43.

### *The Electricity Act 1989*

- 38 (1) Section 3 of the <sup>M40</sup>Electricity Act 1989 (general duties of the Secretary of State and the Director General of Electricity Supply when exercising certain functions) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1)(c) (duty, subject to subsection (2), to promote competition), for the words “subsection (2)” there shall be substituted the words “ subsections (2) and (2A) ”.
- (3) After subsection (2) (duties as regards the supply of electricity in Scotland in certain cases) there shall be inserted—
- “(2A) If an order under section 32(1) below requires a public electricity supplier to make, or produce evidence showing that he has made, arrangements or additional arrangements which will secure the result mentioned in subsection (2B) below, the order, so far as relating to any such requirement, may be made for the purpose of, or for purposes which include, promoting the supply to any premises of—
- (a) heat produced in association with electricity, or
  - (b) steam produced from, or air or water heated by, such heat.
- (2B) The result referred to in subsection (2A) above is that, for a period specified in the order, there will be available to the public electricity supplier—
- (a) from combined heat and power stations; or
  - (b) from combined heat and power stations of any particular description,

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an aggregate amount of generating capacity which is not less than that specified in relation to him in the order.

(2C) In subsection (2B) above, “combined heat and power station” has the meaning given by section 32(8) below.”.

(4) In subsection (3) (further duties), for the words “and (2)” there shall be substituted the words “, (2) and (2A) ”.

**Marginal Citations**

**M40** 1989 c. 15.

39 (1) Section 32 of that Act (electricity from non-fossil fuel sources) shall be amended in accordance with the following provisions of this paragraph.

(2) After subsection (2) (result to be secured by arrangements made pursuant to an order under subsection (1)) there shall be inserted—

“(2A) For the purposes of this section—

- (a) combined heat and power stations generally; and
- (b) combined heat and power stations of any particular description,

are to be taken as being particular descriptions of non-fossil fuel generating stations.

(2B) A particular description of combined heat and power stations may be described by reference to, or by reference to matters which include—

- (a) the heat or, as the case may be, the steam or heated air or water to be supplied from the station to any premises;
- (b) any premises to which any such heat, steam or heated air or water is to be supplied (including, without prejudice to the generality of the foregoing, the use to which any such premises are put);
- (c) the means or method by which any such heat, steam or heated air or water is to be supplied to any premises (including, without prejudice to the generality of the foregoing, any system or network of supply or distribution); or
- (d) the arrangements (including financial or contractual arrangements) under which any such heat, steam or heated air or water is to be supplied to any premises.

(2C) Subsections (2A) and (2B) above are without prejudice to—

- (a) the generality of subsection (2)(b) above, or
- (b) section 111(2) below;

and subsection (2B) above is without prejudice to the generality of subsection (2A)(b) above.”.

(3) In subsection (8) (interpretation), after the definition of “coal products” there shall be inserted—

““combined heat and power station” means a non-fossil fuel generating station which is (or may be) operated for purposes including the supply to any premises of—

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- (a) heat produced in association with electricity, or  
(b) steam produced from, or air or water heated by, such heat;”.
- 40 In Schedule 4 to that Act (other powers etc. of licence holders) in paragraph 4(1) (b) (power for certain bodies to execute works involving alterations of electric lines or plant) for the words “National Rivers Authority” there shall be substituted the words “ Environment Agency ”.
- 41 In Schedule 5 to that Act (water rights) in paragraph 8(b) for the words “river purification authority within whose area the watercourse or loch affected is situated” there shall be substituted the words “ Scottish Environment Protection Agency ”.

*The Town and Country Planning Act 1990*

- 42 In section 2 of the <sup>M41</sup>Town and Country Planning Act 1990 (joint planning boards for National Parks and other areas) after subsection (6) there shall be inserted—
- “(6A) Section 241 of the <sup>M42</sup>Local Government Act 1972 shall be taken to authorise the application to a joint planning board, subject to any necessary modifications, of any provisions of Part III (accounts and audit) of the <sup>M43</sup>Local Government Finance Act 1982 (as well as of any provisions of the <sup>M44</sup>Local Government Act 1972) by such an order as is mentioned in subsection (6) above.”

**Marginal Citations**

- M41** 1990 c. 43.  
**M42** 1972 c. 70.  
**M43** 1982 c. 32.  
**M44** 1972 c. 70.

- 43 In Schedule 5 to that Act (conditions relating to mineral working) in paragraph 4 (consultations) after sub-paragraph (4) there shall be inserted—
- “(4A) Without prejudice to the application of this paragraph in relation to consultation with the Forestry Commission, where the Minister is consulted pursuant to any provision of this paragraph—
- (a) he is not required to inspect any land or to express a view on any matter or question; and
- (b) he is not precluded from responding in general terms or otherwise in terms which are not specific to the land in question.”.
- 44 In Schedule 6 to that Act (determination of certain appeals by person appointed by the Secretary of State) in paragraph 1(1) (power, in respect of appeals under certain provisions, to prescribe classes of appeals to be determined by an appointed person instead of by the Secretary of State), after “208,” there shall be inserted “ and paragraphs 6(11) and (12) and 11(1) of Schedule 13 and paragraph 9(1) of Schedule 14 to the Environment Act 1995, ”.

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*The Environmental Protection Act 1990*

- 45 (1) Section 1 of the <sup>M45</sup>Environmental Protection Act 1990 (interpretation of Part I) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (7) (definition of “enforcing authority” in relation to England and Wales), for the words “the chief inspector or the local authority by whom” there shall be substituted the words “the Environment Agency or the local authority by which”.
- (3) For subsection (8) (definition of “enforcing authority” in relation to Scotland) there shall be substituted—
- “(8) In relation to Scotland, references to the “enforcing authority” and a “local enforcing authority” are references to the Scottish Environment Protection Agency (in this Part referred to as “SEPA”).”
- (4) After subsection (13) there shall be added—
- “(14) In this Part “the appropriate Agency” means—
- (a) in relation to England and Wales, the Environment Agency; and
- (b) in relation to Scotland, SEPA.”

**Marginal Citations**

**M45** 1990 c. 43.

- 46 (1) Section 4 of that Act (determination of authority by whom functions are exercisable) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (2) (functions of the chief inspector etc in relation to prescribed processes designated for central control) for the words “the chief inspector appointed for England and Wales by the Secretary of State under section 16 below and, in relation to Scotland, of the chief inspector so appointed for Scotland or of the river purification authority, as determined under regulations made under section 5(1) below” there shall be substituted the words “the appropriate Agency”.
- (3) In subsection (3) (discharge of functions designated for local control) for paragraphs (a) and (b) there shall be substituted—
- “(a) in the case of a prescribed process carried on (or to be carried on) by means of a mobile plant, where the person carrying on the process has his principal place of business—
- (i) in England and Wales, the local authority in whose area that place of business is;
- (ii) in Scotland, SEPA;
- (b) in any other cases, where the prescribed processes are (or are to be) carried on—
- (i) in England and Wales, the local authority in whose area they are (or are to be) carried on;
- (ii) in Scotland, SEPA;”.
- (4) In subsection (4) (directions transferring functions to the chief inspector) for the words “the chief inspector” there shall be substituted the words “the Environment Agency”.

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- (5) After that subsection there shall be inserted—
- “(4A) In England and Wales, a local authority, in exercising the functions conferred or imposed on it under this Part by virtue of subsection (3) above, shall have regard to the strategy for the time being published pursuant to section 80 of the Environment Act 1995.”
- (6) In subsection (5) (effect of such a transfer)—
- (a) for the words “the chief inspector” there shall be substituted the words “ the Environment Agency ”; and
- (b) for the word “him” there shall be substituted the words “ that Agency ”.
- (7) In subsection (8) (giving or withdrawal of directions)—
- (a) for the words “the chief inspector” in each place where they occur there shall be substituted the words “ the Environment Agency ”; and
- (b) the words “or, as the case may be, in the Edinburgh Gazette”, in each place where they occur, shall be omitted.
- (8) After subsection (8) there shall be inserted—
- “(8A) The requirements of sub-paragraph (ii) of paragraph (a) or, as the case may be, of paragraph (b) of subsection (8) above shall not apply in any case where, in the opinion of the Secretary of State, the publication of notice in accordance with that sub-paragraph would be contrary to the interests of national security.
- (8B) Subsections (4) to (8A) above shall not apply to Scotland.”
- (9) For subsection (9) (which, among other things, imposed a duty on the chief inspector etc to follow developments in technology etc and which is partly superseded by this Act) there shall be substituted—
- “(9) It shall be the duty of local authorities to follow such developments in technology and techniques for preventing or reducing pollution of the environment due to releases of substances from prescribed processes as concern releases into the air of substances from prescribed processes designated for local control.”
- (10) In subsection (10) (duty of chief inspector etc to give effect to directions) for the words “the chief inspector, river purification authorities” there shall be substituted the words “ the Environment Agency, SEPA ”.
- (11) In subsection (11) (meaning of “local authority”)—
- (a) at the beginning of paragraph (b) there shall be inserted the words “ in England and Wales, ” and
- (b) paragraph (c) and the word “and” immediately preceding it shall cease to have effect.

#### Commencement Information

- I4** Sch. 22 para. 46 wholly in force at 23.12.1997; Sch. 22 para. 46 not in force at Royal Assent see s. 125(3); Sch. 22 para. 46(1)-(4)(6)-(11) in force at 1.4.1996 by S.I. 1996/186, art. 3; Sch. 22 para. 46(5) in force at 23.12.1997 by S.I. 1997/3044, art. 2

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- 47 Section 5 of that Act (further provision for Scotland as to discharge and scope of functions) shall cease to have effect.
- 48 In section 6 of that Act, in subsection (2) (fee payable on application for authorisation) after the words “shall be accompanied by” there shall be inserted—
- “(a) in a case where, by virtue of section 41 of the Environment Act 1995, a charge prescribed by a charging scheme under that section is required to be paid to the appropriate Agency in respect of the application, the charge so prescribed; or
- (b) in any other case.”.
- 49 (1) In section 7 of that Act (conditions of authorisations) in subsection (9) the words from “and, in relation to Scotland,” to the end of the subsection shall be omitted.
- (2) At the end of subsection (12) of that section (definition of “relevant enactments” for the purposes of subsection (2)) there shall be added “; and
- (g) section 87 of the Environment Act 1995.”.
- 50 (1) Section 8 of that Act (fees and charges for authorisations) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (payments to be charged by, or paid to, the enforcing authority in accordance with schemes), for the words “enforcing authority” there shall be substituted the words “local enforcing authority”.
- (3) Subsection (4) (separate schemes for different descriptions of enforcing authority) shall cease to have effect.
- (4) In subsection (7) (meaning of “relevant expenditure attributable to authorisations”) —
- (a) for the words “enforcing authorities” there shall be substituted the words “local enforcing authorities”; and
- (b) the words from “together with the expenditure incurred by the National Rivers Authority” onwards shall be omitted.
- (5) In subsection (8) (power to revoke authorisation for non-payment of charge), for the words “enforcing authority” there shall be substituted the words “local enforcing authority”.
- (6) Subsection (9) (payments by the Secretary of State to the National Rivers Authority) shall cease to have effect.
- (7) For subsections (10) and (11) (special provision as respects Scotland) there shall be substituted—
- “(10) The foregoing provisions of this section shall not apply to Scotland.”
- 51 (1) Section 10 of that Act (variation of authorisations by enforcing authority) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (3) (which provides for the variation specified in a variation notice to take effect on the date so specified unless the notice is withdrawn) after the words “unless the notice is withdrawn” there shall be inserted the words “or is varied under subsection (3A) below”.
- (3) After that subsection there shall be inserted—

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“(3A) An enforcing authority which has served a variation notice may vary that notice by serving on the holder of the authorisation in question a further notice—

- (a) specifying the variations which the enforcing authority has decided to make to the variation notice; and
- (b) specifying the date or dates on which the variations specified in the variation notice, as varied by the further notice, are to take effect;

and any reference in this Part to a variation notice, or to a variation notice served under subsection (2) above, includes a reference to such a notice as varied by a further notice served under this subsection.”

(4) In subsection (4) of that section, for paragraph (b) (requirement to pay the fee prescribed under section 8 of that Act) there shall be substituted—

“(b) require the holder to pay, within such period as may be specified in the notice,—

- (i) in a case where the enforcing authority is the Environment Agency or SEPA, the charge (if any) prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995; or
- (ii) in any other case, the fee (if any) prescribed by a scheme under section 8 above.”

(5) In subsection (8) of that section, in the definition of “vary”, after the word ““vary”” there shall be inserted “(a)” and after the words “any of them;” there shall be added the words “and

- (b) in relation to a variation notice, means adding to, or varying or rescinding the notice or any of its contents;”.

#### Commencement Information

**I5** Sch. 22 para. 51 partly in force; Sch. 22 para. 51 not in force at Royal Assent see s. 125(3); Sch. 22 para. 51(1)-(3)(5) in force at 12.10.1995 by S.I. 1995/2649, art. 2(j)(iii); Sch. 22 para. 51(4) in force at 1.4.1996 by S.I. 1996/186, art. 3

52 In section 11 of that Act (application by holders of authorisations for variation of conditions etc) for subsection (9) (fees) there shall be substituted—

“(9) Any application to the enforcing authority under this section shall be accompanied—

- (a) in a case where the enforcing authority is the Environment Agency or SEPA, by the charge (if any) prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995; or
- (b) in any other case, by the fee (if any) prescribed by a scheme under section 8 above.”

53 At the end of section 13 of that Act (enforcement notices) there shall be added—

“(4) The enforcing authority may, as respects any enforcement notice it has issued to any person, by notice in writing served on that person, withdraw the notice.”

54 (1) Section 15 of that Act (appeals against certain authorisations and notices) shall be amended in accordance with the following provisions of this paragraph.

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- (2) In subsection (2) (appeals against variation notices, enforcement notices or prohibition notices to the Secretary of State) after the words “to the Secretary of State” there shall be added the words “ (except where the notice implements a direction of his). ”
- (3) For subsection (3) (reference of matters involved in appeals under that section to, and determination of such appeals by, persons appointed by the Secretary of State) there shall be substituted—
- “(3) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).”
- (4) For subsection (5) (hearings) there shall be substituted—
- “(5) Before determining an appeal under this section, the Secretary of State may, if he thinks fit—
- (a) cause the appeal to take 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); or
- (b) cause a local inquiry to be held;
- and the Secretary of State shall act as mentioned in paragraph (a) or (b) above if a request is made by either party to the appeal to be heard with respect to the appeal.”
- (5) In subsection (10) (regulations about appeals) after paragraph (b) there shall be added — “ and any such regulations may make different provision for different cases or different circumstances. ”
- 55 Sections 16 to 18 of that Act (appointment of inspectors, powers of inspectors and others and power to deal with cause of imminent danger of serious harm) shall cease to have effect.
- 56 In section 19 of that Act (obtaining of information from persons and authorities) in subsection (2) (power of specified authorities by notice in writing to require provision of information)—
- (a) for paragraphs (c) and (d) (the chief inspector and river purification authorities) there shall be substituted—
- “(c) the Environment Agency, and
- (d) SEPA,”; and
- (b) after the words “service of the notice” there shall be inserted the words “ , or at such time, ”.
- 57 (1) Section 20 of that Act (public registers of information) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (2) (local registers also to contain prescribed particulars of relevance to the area which are contained in central registers) after the word “authority”, where it first occurs, there shall be inserted the words “ in England and Wales ” and for the words “the chief inspector or river purification authority”, in each place where they occur, there shall be substituted the words “ the Environment Agency ”.
- (3) Subsection (3) (registers in Scotland) shall cease to have effect.
- (4) In subsection (4) (port health authorities) after the word “authority” where it first occurs there shall be inserted the words “ in England and Wales ” and for the words



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“the chief inspector” there shall be substituted the words “ the Environment Agency ”.

- (5) In subsection (7) (registers to be available for inspection by, and facilities for obtaining copies of entries to be afforded to, the public) after paragraph (b) there shall be added the words— “ 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. ”
- (6) Subsection (9) (duty to furnish the National Rivers Authority with information for purposes of its register) shall cease to have effect.
- 58 (1) Section 22 of that Act (exclusion from registers of certain confidential information) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (5) (information not to be entered on the register until expiration of certain time limits)—
- (a) in paragraph (a), for the words “on the register” there shall be substituted the words “ in the register ”; and
- (b) in the words following paragraph (b), for the words from “on the register” onwards there shall be substituted the words “ in the register until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn ”.
- (3) For subsection (6) (which applies subsections (3), (5) and (10) of section 15 in relation to appeals to the Secretary of State against decisions that information is not commercially confidential) there shall be substituted—
- “(6) Subsections (5) and (10) of section 15 above shall apply in relation to an appeal under subsection (5) above as they apply in relation to an appeal under that section, but—
- (a) subsection (5) 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 Environment Act 1995 (delegation or reference of appeals etc).”
- 59 (1) Section 23 of that Act (offences) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (offences) paragraphs (d) to (f) and (k) shall cease to have effect.
- (3) In subsection (2)(a) (which provides for a fine not exceeding £20,000 on summary conviction of any offence under section 23(1)(a), (c) or (l)) after the words “£20,000” there shall be inserted the words “ or to imprisonment for a term not exceeding three months, or to both ”.
- (4) Subsection (4) (punishment for offences under paragraph (d), (e), (f) or (k) of subsection (1)) shall cease to have effect.
- (5) Subsection (5) (right of inspector to prosecute before a magistrates’ court if authorised to do so by the Secretary of State) shall cease to have effect.
- 60 (1) In section 27 of that Act (power of chief inspector etc to remedy harm) in subsection (1), for the words “the chief inspector or, in Scotland, a river purification authority” there shall be substituted the words “ the appropriate Agency ”.

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- (2) In subsection (2) of that section (powers not to be exercised without the Secretary of State’s written approval) for the words from “The chief inspector” to “their” there shall be substituted the words “ The Environment Agency or SEPA, as the case may be, shall not exercise its ”.
- 61 (1) In section 28 of that Act, in subsection (1) (which includes provision that the enforcing authority shall notify the waste regulation authority if a process involves final disposal of controlled waste by deposit in or on land) the words from “but the enforcing authority shall notify” onwards shall cease to have effect.
- (2) Subsections (3) and (4) of that section (which involve liaison between the enforcing authority and the National Rivers Authority) shall cease to have effect.
- 62 (1) Section 30 of that Act (authorities for purposes of Part II) shall be amended in accordance with the following provisions of this paragraph.
- (2) For subsection (1) (waste regulation authorities) there shall be substituted—
- “(1) Any reference in this Part to a waste regulation authority—
- (a) in relation to England and Wales, is a reference to the Environment Agency; and
- (b) in relation to Scotland, is a reference to the Scottish Environment Protection Agency;
- and any reference in this Part to the area of a waste regulation authority shall accordingly be taken as a reference to the area over which the Environment Agency or the Scottish Environment Protection Agency, as the case may be, exercises its functions or, in the case of any particular function, the function in question.”
- (3) In subsection (4) of that section (construction of references to authorities constituted as particular descriptions of authority and provision for the section to be subject to orders under section 10 of the <sup>M46</sup>Local Government Act 1985 establishing authorities for certain purposes)—
- (a) the words “or regulation”, and
- (b) the words from “establishing authorities” onwards,
- shall cease to have effect.
- (4) Subsections (6) (definition of “river purification authority”), (7) and (8) (which relate to authorities which are both waste disposal and waste regulation authorities) shall cease to have effect.

#### **Marginal Citations**

**M46** 1985 c. 51.

- 63 Section 31 of that Act (power to create regional authorities for purposes of waste regulation) shall cease to have effect.
- 64 In section 33 of that Act (prohibition on unauthorised or harmful deposit, treatment or disposal etc of waste) in subsection (7) (defences) for paragraph (c) there shall be substituted—

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- “(c) that the acts alleged to constitute the contravention were done in an emergency in order to avoid danger to human health in a case where—
- (i) he took all such steps as were reasonably practicable in the circumstances for minimising pollution of the environment and harm to human health; and
  - (ii) particulars of the acts were furnished to the waste regulation authority as soon as reasonably practicable after they were done.”
- 65 In section 34 of that Act (duty of care etc as respects waste), after subsection (3) (which specifies the persons who are authorised persons for the purposes of subsection (1)(c)) there shall be inserted—
- “(3A) The Secretary of State may by regulations amend subsection (3) above so as to add, whether generally or in such circumstances as may be prescribed in the regulations, any person specified in the regulations, or any description of person so specified, to the persons who are authorised persons for the purposes of subsection (1)(c) above.”
- 66 (1) Section 35 of that Act (waste management licences: general) shall be amended in accordance with the following provisions of this paragraph.
- (2) After subsection (7) there shall be inserted—
- “(7A) In any case where—
- (a) an entry is required under this section to be made in any record as to the observance of any condition of a licence, and
  - (b) the entry has not been made,
- that fact shall be admissible as evidence that that condition has not been observed.
- (7B) Any person who—
- (a) intentionally makes a false entry in any record required to be kept under any condition of a licence, or
  - (b) with intent to deceive, forges or uses a licence or makes or has in his possession a document so closely resembling a licence as to be likely to deceive,
- shall be guilty of an offence.
- (7C) A person guilty of an offence under subsection (7B) above shall be liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.”
- 67 After section 35 of that Act there shall be inserted—
- “35A Compensation where rights granted pursuant to section 35(4) or 38(9A).**
- (1) This section applies in any case where—
- (a) the holder of a licence is required—
    - (i) by the conditions of the licence; or

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- (ii) by a requirement imposed under section 38(9) below, to carry out any works or do any other thing which he is not entitled to carry out or do;
  - (b) a person whose consent would be required has, pursuant to the requirements of section 35(4) above or 38(9A) below, granted, or joined in granting, to the holder of the licence any rights in relation to any land; and
  - (c) those rights, or those rights together with other rights, are such as will enable the holder of the licence to comply with any requirements imposed on him by the licence or, as the case may be, under section 38(9) below.
- (2) In a case where this section applies, any person who has granted, or joined in granting, the rights in question shall be entitled to be paid compensation under this section by the holder of the licence.
- (3) The Secretary of State shall by regulations provide for the descriptions of loss and damage for which compensation is payable under this section.
- (4) The Secretary of State may by regulations—
- (a) provide for the basis on which any amount to be paid by way of compensation under this section is to be assessed;
  - (b) without prejudice to the generality of subsection (3) and paragraph (a) above, provide for compensation under this section to be payable in respect of—
    - (i) any effect of any rights being granted, or
    - (ii) any consequence of the exercise of any rights which have been granted;
  - (c) provide for the times at which any entitlement to compensation under this section is to arise or at which any such compensation is to become payable;
  - (d) provide for the persons or bodies by whom, and the manner in which, any dispute—
    - (i) as to whether any, and (if so) how much and when, compensation under this section is payable; or
    - (ii) as to the person to or by whom it shall be paid,
 is to be determined;
  - (e) provide for when or how applications may be made for compensation under this section;
  - (f) without prejudice to the generality of paragraph (d) above, provide for when or how applications may be made for the determination of any such disputes as are mentioned in that paragraph;
  - (g) without prejudice to the generality of paragraphs (e) and (f) above, prescribe the form in which any such applications as are mentioned in those paragraphs are to be made;
  - (h) make provision similar to any provision made by paragraph 8 of Schedule 19 to the <sup>M47</sup>Water Resources Act 1991;
  - (j) make different provision for different cases, including different provision in relation to different persons or circumstances;

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- (k) include such incidental, supplemental, consequential or transitional provision as the Secretary of State considers appropriate.”.

#### Commencement Information

**I6** Sch. 22 para. 67 wholly in force at 1.4.1999; Sch. 22 para. 67 not in force at Royal Assent see s. 125(3); Sch. 22 para. 67 in force for specified purposes at 1.2.1996 by S.I. 1996/186, art 2; Sch. 22 para. 67 in force for further specified purposes at 1.4.1998 by S.I. 1998/604, art. 2; Sch. 22 para. 67 in force at 1.4.1999 insofar as not already in force by S.I. 1999/803, art. 3

#### Marginal Citations

**M47** 1991 c. 28.

- 68 (1) Section 36 of that Act (grant of licences) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (making of applications) for the words following paragraph (b) there shall be substituted—
- “and shall be made on a form provided for the purpose by the waste regulation authority and accompanied by such information as that authority reasonably requires and the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995.
- (1A) Where an applicant for a licence fails to provide the waste regulation authority with any information required under subsection (1) above, the authority may refuse to proceed with the application, or refuse to proceed with it until the information is provided.”
- (3) In subsection (4) (reference of proposals to, and consideration of representations made by, other bodies)—
- (a) in paragraph (a), for the words “the National Rivers Authority” there shall be substituted the words “ the appropriate planning authority ”, and
- (b) in paragraph (b), for the word “Authority” there shall be substituted the word “ authority ”.
- (4) Subsections (5) (reference by National Rivers Authority to the Secretary of State) and (6) (which makes provision for Scotland in place of subsection (4)) shall cease to have effect.
- (5) After subsection (9) (application deemed to be rejected if not granted or refused within four months from being received) there shall be inserted—
- “(9A) Subsection (9) above—
- (a) shall not have effect in any case where, by virtue of subsection (1A) above, the waste regulation authority refuses to proceed with the application in question, and
- (b) shall have effect in any case where, by virtue of subsection (1A) above, the waste regulation authority refuses to proceed with it until the required information is provided, with the substitution for the period of four months there mentioned of the period of four months beginning with the date on which the authority received the information.”

*Status: Point in time view as at 27/05/1997. This version of this schedule contains provisions that are not valid for this point in time.*

*Changes to legislation: Environment Act 1995, SCHEDULE 22 is up to date with all changes known to be in force on or before 26 March 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) For subsection (10) (period of 21 days allowed for bodies to make representations) there shall be substituted—

“(10) The period allowed to the appropriate planning authority, the Health and Safety Executive or the appropriate nature conservancy body for the making of representations under subsection (4) or (7) above about a proposal is the period of twenty-eight days beginning with the day on which the proposal is received by the waste regulation authority or such longer period as the waste regulation authority, the appropriate planning authority, the Executive or the body, as the case may be, agree in writing.

(11) In this section—

“the appropriate planning authority” means—

- (a) where the relevant land is situated in the area of a London borough council, that London borough council;
- (b) where the relevant land is situated in the City of London, the Common Council of the City of London;
- (c) where the relevant land is situated in a non-metropolitan county in England, the council of that county;
- (d) where the relevant land is situated in a National Park or the Broads, the National Park authority for that National Park or, as the case may be, the Broads Authority;
- (e) where the relevant land is situated elsewhere in England or Wales, the council of the district or, in Wales, the county or county borough, in which the land is situated;
- (f) where the relevant land is situated in Scotland, the council constituted under section 2 of the <sup>M48</sup>Local Government etc. (Scotland) Act 1994 for the area in which the land is situated;

“the Broads” has the same meaning as in the <sup>M49</sup>Norfolk and Suffolk Broads Act 1988;

“National Park authority”, subject to subsection (12) below, means a National Park authority established under section 63 of the Environment Act 1995 which has become the local planning authority for the National Park in question;

“the relevant land” means—

- (a) in relation to a site licence, the land to which the licence relates; and
- (b) in relation to a mobile plant licence, the principal place of business of the operator of the plant to which the licence relates.

(12) As respects any period before a National Park authority established under section 63 of the Environment Act 1995 in relation to a National Park becomes the local planning authority for that National Park, any reference in this section to a National Park authority shall be taken as a reference to the National Park Committee or joint or special planning board for that National Park.

(13) The Secretary of State may by regulations amend the definition of “appropriate planning authority” in subsection (11) above.

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(14) This section shall have effect subject to section 36A below.”

#### Commencement Information

**I7** Sch. 22 para. 68 partly in force; Sch. 22 para. 68 not in force at Royal Assent see s. 125(3); Sch. 22 para. 68(1)(3)(4)(6) wholly in force and Sch. 22 para. 68(2) in force for specified purposes at 1.4.1996 by S.I. 1996/186, art. 3 (with art. 4); Sch. 22 para. 68(2) in force at 1.4.1998 insofar as not already in force and Sch. 22 para. 68(5) in force at 1.4.1998 by S.I. 1998/604, art. 2

#### Marginal Citations

**M48** 1994 c. 39.

**M49** 1988 c. 4.

VALID FROM 01/04/1998

69 After section 36 of that Act there shall be inserted—

#### “36A Consultation before the grant of certain licences.

- (1) This section applies where an application for a licence has been duly made to a waste regulation authority, and the authority proposes to issue a licence subject (by virtue of section 35(4) above) to any condition which might require the holder of the licence to—
  - (a) carry out any works, or
  - (b) do any other thing,which he might not be entitled to carry out or do.
- (2) Before issuing the licence, the waste regulation authority shall serve on every person appearing to the authority to be a person falling within subsection (3) below a notice which complies with the requirements set out in subsection (4) below.
- (3) A person falls within this subsection if—
  - (a) he is the owner, lessee or occupier of any land; and
  - (b) that land is land in relation to which it is likely that, as a consequence of the licence being issued subject to the condition in question, rights will have to be granted by virtue of section 35(4) above to the holder of the licence.
- (4) A notice served under subsection (2) above shall—
  - (a) set out the condition in question;
  - (b) indicate the nature of the works or other things which that condition might require the holder of the licence to carry out or do; and
  - (c) specify the date by which, and the manner in which, any representations relating to the condition or its possible effects are to be made to the waste regulation authority by the person on whom the notice is served.

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- (5) The date which, pursuant to subsection (4)(c) above, is specified in a notice shall be a date not earlier than the date on which expires the period—
- (a) beginning with the date on which the notice is served, and
  - (b) of such length as may be prescribed in regulations made by the Secretary of State.
- (6) Before the waste regulation authority issues the licence it must, subject to subsection (7) below, consider any representations made in relation to the condition in question, or its possible effects, by any person on whom a notice has been served under subsection (2) above.
- (7) Subsection (6) above does not require the waste regulation authority to consider any representations made by a person after the date specified in the notice served on him under subsection (2) above as the date by which his representations in relation to the condition or its possible effects are to be made.
- (8) In subsection (3) above—
- “owner”, in relation to any land in England and Wales, means the person who—
- (a) is for the time being receiving the rack-rent of the land, whether on his own account or as agent or trustee for another person; or
  - (b) would receive the rack-rent if the land were let at a rack-rent,
- but does not include a mortgagee not in possession; and
- “owner”, in relation to any land in Scotland, means a person (other than a creditor in a heritable security not in possession of the security subjects) for the time being entitled to receive or who would, if the land were let, be entitled to receive, the rents of the land in connection with which the word is used and includes a trustee, factor, guardian or curator and in the case of public or municipal land includes the persons to whom the management of the land is entrusted.”

#### Commencement Information

**18** Sch. 22 para. 69 wholly in force at 1.4.1999; Sch. 22 para. 69 not in force at Royal Assent see s. 125(3); Sch. 22 para. 69 in force for specified purposes at 1.4.1998 by S.I. 1998/604, art. 2; Sch. 22 para. 69 in force at 1.4.1999 insofar as not already in force by S.I. 1999/803, art. 3

- 70 (1) In section 37 of that Act (variation of licences) in subsection (1)(b) (which requires an application to be accompanied by the prescribed fee) for the words “the prescribed fee payable under section 41 below,” there shall be substituted the words “the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995, ”.
- (2) In subsection (5) of that section (which applies certain provisions of section 36) the words “(5), (6),” and “(8)” shall be omitted.



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(3) After subsection (6) of that section (cases where an application for modification is deemed to have been rejected) there shall be added—

“(7) This section shall have effect subject to section 37A below.”

#### Commencement Information

**I9** Sch. 22 para. 70 wholly in force at 1.4.1999; Sch. 22 para. 70 not in force at Royal Assent see s. 125(3); Sch. 22 para. 70(1)(2) in force at 1.4.1996 by S.I. 1996/186, art. 3; Sch. 22 para. 70 in force at 1.4.1999 insofar as not already in force by S.I. 1999/803, art. 3

VALID FROM 01/04/1998

71 After section 37 of that Act there shall be inserted—

#### “37A Consultation before certain variations.

- (1) This section applies where—
  - (a) a waste regulation authority proposes to modify a licence under section 37(1) or (2)(a) above; and
  - (b) the licence, if modified as proposed, would be subject to a relevant new condition.
- (2) For the purposes of this section, a “relevant new condition” is any condition by virtue of which the holder of the licence might be required to carry out any works or do any other thing—
  - (a) which he might not be entitled to carry out or do, and
  - (b) which he could not be required to carry out or do by virtue of the conditions to which, prior to the modification, the licence is subject.
- (3) Before modifying the licence, the waste regulation authority shall serve on every person appearing to the authority to be a person falling within subsection (4) below a notice which complies with the requirements set out in subsection (5) below.
- (4) A person falls within this subsection if—
  - (a) he is the owner, lessee or occupier of any land; and
  - (b) that land is land in relation to which it is likely that, as a consequence of the licence being modified so as to be subject to the relevant new condition in question, rights will have to be granted by virtue of section 35(4) above to the holder of the licence.
- (5) A notice served under subsection (3) above shall—
  - (a) set out the relevant new condition in question;
  - (b) indicate the nature of the works or other things which that condition might require the holder of the licence to carry out or do but which he could not be required to carry out or do by virtue of the conditions (if any) to which, prior to the modification, the licence is subject; and

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- (c) specify the date by which, and the manner in which, any representations relating to the condition or its possible effects are to be made to the waste regulation authority by the person on whom the notice is served.
- (6) The date which, pursuant to subsection (5)(c) above, is specified in a notice shall be a date not earlier than the date on which expires the period—
- (a) beginning with the date on which the notice is served, and
  - (b) of such length as may be prescribed in regulations made by the Secretary of State.
- (7) Before the waste regulation authority issues the licence it must, subject to subsection (8) below, consider any representations made in relation to the condition in question, or its possible effects, by any person on whom a notice has been served under subsection (3) above.
- (8) Subsection (7) above does not require the waste regulation authority to consider any representations made by a person after the date specified in the notice served on him under subsection (3) above as the date by which his representations in relation to the condition or its possible effects are to be made.
- (9) A waste regulation authority may postpone the service of any notice or the consideration of any representations required under the foregoing provisions of this section so far as the authority considers that by reason of an emergency it is appropriate to do so.
- (10) In subsection (3) above, “owner” has the same meaning as it has in subsection (3) of section 36A above by virtue of subsection (8) of that section.”.

#### Commencement Information

**I10** Sch. 22 para. 71 wholly in force at 1.4.1999; Sch. 22 para. 71 not in force at Royal Assent see s. 125(3); Sch. 22 para. 71 in force for specified purposes at 1.4.1998 by S.I. 1998/604, art. 2; Sch. 22 para. 71 in force at 1.4.1999 insofar as not already in force by S.I. 1999/803, art. 3

- 72 (1) In section 38 of that Act (revocation and suspension of licences) after subsection (9) (power to require certain measures to be taken where licence suspended) there shall be inserted—

“(9A) A requirement imposed under subsection (9) above may require the holder of a licence to carry out works or do other things notwithstanding that he is not entitled to carry out the works or do the thing and any person whose consent would be required shall grant, or join in granting, the holder of the licence such rights in relation to the land as will enable the holder of the licence to comply with any requirements imposed on him under that subsection.

(9B) Subsections (2) to (8) of section 36A above shall, with the necessary modifications, apply where the authority proposes to impose a requirement under subsection (9) above which may require the holder of a licence to carry out any such works or do any such thing as is mentioned in subsection (9A) above as they apply where the authority proposes to issue a licence subject

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to any such condition as is mentioned in subsection (1) of that section, but as if—

- (a) the reference in subsection (3) of that section to section 35(4) above were a reference to subsection (9A) above; and
- (b) any reference in those subsections—
  - (i) to the condition, or the condition in question, were a reference to the requirement; and
  - (ii) to issuing a licence were a reference to serving a notice, under subsection (12) below, effecting the requirement.

(9C) The authority may postpone the service of any notice or the consideration of any representations required under section 36A above, as applied by subsection (9B) above, so far as the authority considers that by reason of an emergency it is appropriate to do so.”

(2) After subsection (12) of that section (revocations and suspensions etc. to be effected by service of notice) there shall be added—

“(13) If a waste regulation authority is of the opinion that proceedings for an offence under subsection (10) or (11) above would afford an ineffectual remedy against a person who has failed to comply with any requirement imposed under subsection (9) above, the authority may take proceedings in the High Court or, in Scotland, in any court of competent jurisdiction for the purpose of securing compliance with the requirement.”

#### Commencement Information

**III** Sch. 22 para. 72 wholly in force at 1.4.1999; Sch. 22 para. 72 not in force at Royal Assent see s. 125(3); Sch. 22 para. 72(2) in force at 1.4.1996 by S.I. 1996/186, art. 3; Sch. 22 para. 72(1) in force for specified purposes at 1.4.1998 by S.I. 1998/604, art. 2; Sch. 22 para. 72 in force at 1.4.1999 insofar as not already in force by S.I. 1999/803, art. 3

- 73 (1) Section 39 of that Act (surrender of licences) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (3) (application for surrender of a site licence) for the words from “in such form” onwards there shall be substituted the words “ on a form provided by the authority for the purpose, giving such information and accompanied by such evidence as the authority reasonably requires and accompanied by the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995. ”
  - (3) In subsection (7) (consideration of representations before accepting surrender of a licence)—
    - (a) for the words “the National Rivers Authority” and “the Authority” there shall be substituted the words “ the appropriate planning authority ”; and
    - (b) the words following paragraph (b) shall cease to have effect.
  - (4) Subsection (8) (which makes provision for Scotland in place of subsection (7)) shall cease to have effect.
  - (5) In subsection (11) (meaning of “the allowed period”) for the words “subsections (7) and (8) above” there shall be substituted the words “ subsection (7) above ”.

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(6) After subsection (11) there shall be added—

“(12) In this section—

“the appropriate planning authority” means—

- (a) where the relevant land is situated in the area of a London borough council, that London borough council;
- (b) where the relevant land is situated in the City of London, the Common Council of the City of London;
- (c) where the relevant land is situated in a non-metropolitan county in England, the council of that county;
- (d) where the relevant land is situated in a National Park or the Broads, the National Park authority for that National Park or, as the case may be, the Broads Authority;
- (e) where the relevant land is situated elsewhere in England or Wales, the council of the district or, in Wales, the county or county borough, in which the land is situated;
- (f) where the relevant land is situated in Scotland, the council constituted under section 2 of the <sup>M50</sup>Local Government etc. (Scotland) Act 1994 for the area in which the land is situated;

“the Broads” has the same meaning as in the <sup>M51</sup>Norfolk and Suffolk Broads Act 1988;

“National Park authority”, subject to subsection (13) below, means a National Park authority established under section 63 of the Environment Act 1995 which has become the local planning authority for the National Park in question;

“the relevant land”, in the case of any site licence, means the land to which the licence relates.

(13) As respects any period before a National Park authority established under section 63 of the Environment Act 1995 in relation to a National Park becomes the local planning authority for that National Park, any reference in this section to a National Park authority shall be taken as a reference to the National Park Committee or joint or special planning board for that National Park.

(14) The Secretary of State may by regulations amend the definition of “appropriate planning authority” in subsection (12) above.”

#### Commencement Information

**I12** Sch. 22 para. 73 partly in force; Sch. 22 para. 73 not in force at Royal Assent see s. 125(3); Sch. 22 para. 73(1)(3)-(6) wholly in force and Sch. 22 para. 73(2) in force for specified purposes at 1.4.1996 by S.I. 1996/186, art. 3; Sch. 22 para. 73(2) in force at 1.4.1998 insofar as not already in force by S.I. 1998/604, art. 2

#### Marginal Citations

**M50** 1994 c. 39.

**M51** 1988 c. 4.

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- 74 In section 40 of that Act (transfer of licences) in subsection (3) (mode of making application for transfer of licence) for the words from “in such form” to “section 41 below” there shall be substituted the words “ on a form provided by the authority for the purpose, accompanied by such information as the authority may reasonably require, the charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995 ”.

#### Commencement Information

**I13** Sch. 22 para. 74 partly in force; Sch. 22 para. 74 not in force at Royal Assent see s. 125(3); Sch. 22 para. 74 in force for specified purposes at 1.4.1996 by S.I. 1996/186, art. 3; Sch. 22 para. 74 in force at 1.4.1998 insofar as not already in force by S.I. 1998/604, art. 2

- 75 Section 41 of that Act (fees and charges for licences) shall cease to have effect.
- 76 (1) Section 42 of that Act (supervision of licensed activities) shall be amended in accordance with the following provisions of this paragraph.
- (2) Subsection (2) (consultation with the National Rivers Authority etc) shall cease to have effect.
- (3) In subsection (4) (recovery of expenditure from the holder or, if it has been surrendered, the former holder of a licence) for the words “the holder of the licence or, if the licence has been surrendered, from the former holder of it” there shall be substituted the words “ the holder, or (as the case may be) the former holder, of the licence ”.
- (4) In subsection (5) (powers where it appears that a condition of a licence is not being complied with) after the words “is not being complied with” there shall be inserted the words “ or is likely not to be complied with, ”.
- (5) For paragraph (a) of that subsection there shall be substituted—
- “(a) serve on the holder of the licence a notice—
- (i) stating that the authority is of the opinion that a condition of the licence is not being complied with or, as the case may be, is likely not to be complied with;
- (ii) specifying the matters which constitute the non-compliance or, as the case may be, which make the anticipated non-compliance likely;
- (iii) specifying the steps which must be taken to remedy the non-compliance or, as the case may be, to prevent the anticipated non-compliance from occurring; and
- (iv) specifying the period within which those steps must be taken; and”.
- (6) In paragraph (b) of that subsection (powers which become exercisable on non-compliance) for the words “has not complied with the condition within that time,” there shall be substituted the words “ has not taken the steps specified in the notice within the period so specified, ”.
- (7) After subsection (6) (power to revoke or suspend a licence) there shall be inserted—
- “(6A) If a waste regulation authority is of the opinion that revocation or suspension of the licence, whether entirely or to any extent, under subsection (6) above

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would afford an ineffectual remedy against a person who has failed to comply with any requirement imposed under subsection (5)(a) above, the authority may take proceedings in the High Court or, in Scotland, in any court of competent jurisdiction for the purpose of securing compliance with the requirement.”

- (8) In subsection (7) (application of certain provisions of section 38 to revocation or suspension of a licence)—
- (a) for the words from “subsections (5)” to “38” there shall be substituted the words “ subsections (5) and (12) or, as the case may be, subsections (8) to (12) of section 38 ”; and
  - (b) the words from “and the power” onwards shall cease to have effect.

#### Commencement Information

**I14** Sch. 22 para. 76 partly in force; Sch. 22 para. 76(8)(a) in force at Royal Assent, see s. 125(3); Sch. 22 para. 76(1)(3) in force at 21.9.1995 by S.I. 1995/1983, art. 3; Sch. 22 para. 76(2)(4)-(7)(8)(b) in force at 1.4.1996 by S.I. 1996/186, art. 3; Sch. 22 para. 76 in force at 1.4.1998 insofar as not already in force by S.I. 1998/604, art. 2

- 77 In section 43 of that Act, in subsection (2), paragraphs (a) and (b) (reference of matters involved in appeals under that section to, and determination of such appeals by, persons appointed by the Secretary of State) shall cease to have effect and after that section there shall be inserted—
- “(2A) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).”
- 78 Section 50 of that Act (waste disposal plans of waste regulation authorities) shall cease to have effect.

VALID FROM 01/04/2000

- 79 Section 61 of that Act (duty of waste regulation authorities as respects closed landfills) shall cease to have effect.

#### Commencement Information

**I15** Sch. 22 para. 79 wholly in force; Sch. 22 para. 79 not in force at Royal Assent see s. 125(3); Sch. 22 para. 79 in force for E. at 1.4.2000 by S.I. 2000/340, art. 2 (with art. 3); s. 79 in force for S. at 14.7.2000 by S.S.I. 2000/180, art. 2(1)(b) (subject to art. 2(2) and with art. 3); Sch. 22 para. 79 in force for W. at 15.9.2001 by S.I. 2001/3211, art. 2(b) (with art. 3)

- 80 (1) Section 62 of that Act (special provision with respect to certain dangerous and intractable waste) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (3), for paragraph (a) (regulations providing for the supervision of certain activities and the recovery of the costs from persons carrying on the activities) there shall be substituted—
- “(a) for the supervision by waste regulation authorities—

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- (i) of activities authorised by virtue of the regulations or of activities by virtue of carrying on which persons are subject to provisions of the regulations, or
- (ii) of persons who carry on activities authorised by virtue of the regulations or who are subject to provisions of the regulations,

and for the recovery from persons falling within sub-paragraph (ii) above of the costs incurred by waste regulation authorities in performing functions conferred upon those authorities by the regulations;”.

- (3) After that subsection (which also includes provision for regulations to provide for appeals to the Secretary of State) there shall be added—

“(3A) This section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).”

#### Commencement Information

**I16** Sch. 22 para. 80 wholly in force at 1.4.1996; Sch. 22 para. 80 not in force at Royal Assent see s. 125(3); Sch. 22 para. 80(1)(2) in force at 21.9.1995 by S.I. 1995/1983, art. 3; Sch. 22 para. 80(3) in force at 1.4.1996 by S.I. 1996/186, art. 3

VALID FROM 01/04/2015

- 81 In section 63 of that Act (waste other than controlled waste) for subsection (2) (offences relating to the deposit of waste which is not controlled waste but which, if it were such waste, would be special waste) there shall be substituted—

“(2) A person who deposits, or knowingly causes or knowingly permits the deposit of, any waste—

(a) which is not controlled waste, but

(b) which, if it were controlled waste, would be special waste,

in a case where he would be guilty of an offence under section 33 above if the waste were special waste and any waste management licence were not in force, shall, subject to subsection (3) below, be guilty of that offence and punishable as if the waste were special waste.”

- 82 (1) Section 64 of that Act (public registers) shall be amended in accordance with the following provisions of this paragraph.

- (2) After subsection (2) there shall be inserted—

“(2A) The Secretary of State may give to a waste regulation authority directions requiring the removal from any register of its of any specified information not prescribed for inclusion under subsection (1) above or which, by virtue of section 65 or 66 below, ought to be excluded from the register.”

- (3) In subsection (4) (duty of waste collection authorities in England to maintain registers)—

- (a) after the word “England” there shall be inserted the words “ or Wales ”; and
- (b) the words “which is not a waste regulation authority” shall be omitted.

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(4) For subsection (5) (waste regulation authorities in England to furnish information to waste collection authorities) there shall be substituted—

“(5) The waste regulation authority in relation to England and Wales shall furnish any waste collection authorities in its area with the particulars necessary to enable them to discharge their duty under subsection (4) above.”

(5) In subsection (6) (registers to be available for inspection by, and facilities for obtaining copies of entries to be afforded to, the public)—

- (a) after the words “waste collection authority” there shall be inserted “ (a) ”;
- (b) after the words “hours and” there shall be inserted “ (b) ”; and
- (c) after the paragraph (b) so formed, there shall be added the words— “ 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. ”

#### Commencement Information

**I17** Sch. 22 para. 82 partly in force; Sch. 22 para. 82 not in force at Royal Assent see s. 125(3); Sch. 22 para. 82(1)(5) in force for specified purposes at 21.9.1995 by S.I. 1995/1983, art. 3; Sch. 22 para. 82 in force at 1.4.1996 insofar as not already in force by S.I. 1996/186, art. 3

83 (1) In section 66 of that Act (exclusion from registers of certain confidential information) in subsection (5) (information not to be entered on the register until expiration of certain time limits) in the words following paragraph (b), for the words from “pending” onwards there shall be substituted the words “until the end of the period of seven days following the day on which the appeal is finally determined or withdrawn”.

(2) For subsection (6) (which applies section 43(2) and (8) to appeals to the Secretary of State against decisions that information is not commercially confidential) there shall be substituted—

“(6) Subsections (2) and (8) of section 43 above shall apply in relation to appeals under subsection (5) above as they apply in relation to appeals under that section; but

- (a) subsection (2)(c) 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 Environment Act 1995 (delegation or reference of appeals etc).”

84 Section 67 of that Act (annual reports of waste regulation authorities) shall cease to have effect.

85 Sections 68 to 70 of that Act (functions of the Secretary of State and appointment etc of inspectors, powers of entry and power to deal with cause of imminent danger of serious pollution) shall cease to have effect.

86 (1) In section 71 of that Act (obtaining of information from persons and authorities) subsection (1) (which is superseded by this Act) shall cease to have effect.



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- (2) In subsection (2) of that section (power by notice to require a person to furnish information within such period as may be specified in the notice) after the words “service of the notice” there shall be inserted the words “, or at such time,”.
- 87 Section 72 of that Act (default powers of the Secretary of State) shall cease to have effect.

VALID FROM 01/04/2003

- 88 (1) Section 75 of that Act (meaning of “waste” etc.) shall be amended in accordance with the following provisions of this paragraph.
- (2) For subsection (2) (definition of “waste”) there shall be substituted—
- “(2) “Waste” means any substance or object in the categories set out in Schedule 2B to this Act which the holder discards or intends or is required to discard; and for the purposes of this definition—
- “holder” means the producer of the waste or the person who is in possession of it; and
- “producer” means any person whose activities produce waste or any person who carries out pre-processing, mixing or other operations resulting in a change in the nature or composition of this waste.”
- (3) Subsection (3) (presumption that anything discarded is waste unless the contrary is proved) shall cease to have effect.
- (4) After subsection (9) there shall be added—
- “(10) Schedule 2B to this Act (which reproduces Annex I to the Waste Directive) shall have effect.
- (11) Subsection (2) above is substituted, and Schedule 2B to this Act is inserted, for the purpose of assigning to “waste” in this Part the meaning which it has in the Waste Directive by virtue of paragraphs (a) to (c) of Article 1 of, and Annex I to, that Directive, and those provisions shall be construed accordingly.
- (12) In this section “the Waste Directive” means the <sup>M52</sup>directive of the Council of the European Communities, dated 15th July 1975, on waste, as amended by—
- (a) the <sup>M53</sup>directive of that Council, dated 18th March 1991, amending directive [75/442/EEC](#) on waste; and
- (b) the <sup>M54</sup>directive of that Council, dated 23rd December 1991, standardising and rationalising reports on the implementation of certain Directives relating to the environment.”

#### Marginal Citations

- M52** 75/442/EEC.  
**M53** 91/156/EEC.  
**M54** 91/692/EEC.

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VALID FROM 01/04/2000

- 89 (1) Section 79 of that Act (statutory nuisances) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (the paragraphs of which specify, subject to subsections (2) to (6A), the matters which constitute statutory nuisances) for the words “Subject to subsections (2) to (6A) below” there shall be substituted the words “ Subject to subsections (1A) to (6A) below ”.
- (3) After that subsection there shall be inserted—
- “(1A) No matter shall constitute a statutory nuisance to the extent that it consists of, or is caused by, any land being in a contaminated state.
- (1B) Land is in a “contaminated state” for the purposes of subsection (1A) above if, and only if, it is in such a condition, by reason of substances in, on or under the land, that—
- (a) harm is being caused or there is a possibility of harm being caused; or
- (b) pollution of controlled waters is being, or is likely to be, caused; and in this subsection “harm”, “pollution of controlled waters” and “substance” have the same meaning as in Part IIA of this Act.”.

#### Commencement Information

**I18** S. 89 wholly in force; s. 89 not in force at Royal Assent see s. 125(3); s. 89 in force for E. at 1.4.2000 by S.I. 2000/340, art. 2 (with art. 3); s. 89 in force for S. at 14.7.2000 by S.S.I. 2000/180, art. 2(1)(b) (subject to art. 2(2) and with art. 3); s. 89 in force for W. at 15.9.2001 by S.I. 2001/3211, art. 2(b) (with art. 3)

- 90 In section 141 of that Act (power to prohibit or restrict the importation or exportation of waste) subsection (5)(a)(ii) (power of Secretary of State by direction to make functions of certain authorities exercisable instead by him) shall cease to have effect.

VALID FROM 01/04/2000

- 91 Section 143 of that Act (public registers of land which may be contaminated) shall cease to have effect.

#### Commencement Information

**I19** S. 91 wholly in force; s. 91 not in force at Royal Assent see s. 125(3); s. 91 in force for E. at 1.4.2000 by S.I. 2000/340, art. 2 (with art. 3); s. 91 in force for S. at 14.7.2000 by S.S.I. 2000/180, art. 2(1)(b) (subject to art. 2(2) and with art. 3); S. 91 in force for W. at 15.9.2001 by S.I. 2001/3211, art. 2(b) (with art. 3)

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- 92 In section 161 of that Act (regulations and orders) in subsection (4) (which specifies the orders under that Act which are not subject to negative resolution procedure under subsection (3)) after the words “does not apply to” there shall be inserted the words “a statutory instrument—
- (a) which contains an order under section 78M(4) above, or
  - (b) by reason only that it contains”.

#### Commencement Information

**I20** S. 92 wholly in force; s. 92 not in force at Royal Assent see s. 125(3); s. 92 in force for E. at 1.4.2000 by S.I. 2000/340, art. 2 (with art. 3); s. 92 in force for S. at 14.7.2000 by S.S.I. 2000/180, art. 2(1)(b) (subject to art. 2(2) and with art. 3); s. 92 in force for W. at 15.9.2001 by S.I. 2001/3211, art. 2(b) (with art. 3)

- 93 (1) Schedule 1 to that Act (authorisations for processes: supplementary provisions) shall be amended in accordance with the following provisions of this paragraph.
- (2) In Part I (grant of authorisations) in paragraph 3(3) (local inquiry or hearing to be held where request to be heard made by the applicant or the local enforcing authority) for the words “the local enforcing authority” there shall be substituted the words “the enforcing authority”.
- (3) In Part II (variation of authorisations) in paragraph 6, at the beginning of sub-paragraph (1) there shall be inserted the words “ Except as provided by sub-paragraph (1A) below, ”.
- (4) After that sub-paragraph there shall be inserted—
- “(1A) The requirements of this paragraph shall not apply in relation to any variations of an authorisation which an enforcing authority has decided to make in consequence of representations made in accordance with this paragraph and which are specified by way of variation of a variation notice by a further notice under section 10(3A) of this Act.”
- (5) After paragraph 7 (applications for variation) there shall be inserted—

#### *“ Call in of applications for variation*

- 8 (1) The Secretary of State may give directions to the enforcing authority requiring that any particular application or any class of applications for the variation of an authorisation shall be transmitted to him for determination pending a further direction under sub-paragraph (5) below.
- (2) The enforcing authority shall inform the applicant of the fact that his application is being transmitted to the Secretary of State.
- (3) Where an application for the variation of an authorisation is referred to him under sub-paragraph (1) above the Secretary of State may—
- (a) cause a local inquiry to be held in relation to the application; or

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- (b) afford the applicant and the authority concerned an opportunity of appearing before and being heard by a person appointed by the Secretary of State;
- and he shall exercise one of the powers under this sub-paragraph in any case where, in the manner prescribed by regulations made by the Secretary of State, a request is made to be heard with respect to the application by the applicant or the enforcing authority concerned.
- (4) Subsections (2) to (5) of section 250 of the <sup>M55</sup>Local Government Act 1972 (supplementary provisions about local inquiries under that section) or, in relation to Scotland, subsections (2) to (8) of section 210 of the <sup>M56</sup>Local Government (Scotland) Act 1973 (which make similar provision) shall, without prejudice to the generality of subsection (1) of either of those sections, apply to local inquiries or other hearings in pursuance of sub-paragraph (3) above as they apply to inquiries in pursuance of either of those sections and, in relation to England and Wales, as if the reference to a local authority in subsection (4) of the said section 250 included a reference to the enforcing authority.
- (5) The Secretary of State shall, on determining any application transferred to him under this paragraph, give to the enforcing authority such a direction as he thinks fit as to whether it is to grant the application and, if so, as to the conditions that are to be attached to the authorisation by means of the variation notice.
- 9 The Secretary of State may give the enforcing authority a direction with respect to any particular application or any class of applications for the variation of an authorisation requiring the authority not to determine or not to proceed with the application or applications of that class until the expiry of any such period as may be specified in the direction, or until directed by the Secretary of State that they may do so, as the case may be.
- 10 (1) Except in a case where an application for the variation of an authorisation has been referred to the Secretary of State under paragraph 8 above and subject to sub-paragraph (3) below, the enforcing authority shall determine an application for the variation of an authorisation within the period of four months beginning with the day on which it received the application or within such longer period as may be agreed with the applicant.
- (2) If the enforcing authority fails to determine an application for the variation of an authorisation within the period allowed by or under this paragraph the application shall, if the applicant notifies the authority in writing that he treats the failure as such, be deemed to have been refused at the end of that period.
- (3) The Secretary of State may, by order, substitute for the period for the time being specified in sub-paragraph (1) above such other period as he considers appropriate and different periods may be substituted for different classes of application.”

**Marginal Citations**

**M55** 1972 c. 70.

**M56** 1973 c. 65.

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- 94 In Schedule 2 to that Act (waste disposal authorities and companies) in paragraph 17(2) (which requires a waste regulation authority or waste disposal authority to furnish information on request to the Secretary of State) the words “a waste regulation authority or” shall cease to have effect.

VALID FROM 01/01/2005

- 95 After Schedule 2A to that Act there shall be inserted—

“SCHEDULE  
2B

CATEGORIES OF WASTE

- 1 Production or consumption residues not otherwise specified below.
- 2 Off-specification products.
- 3 Products whose date for appropriate use has expired.
- 4 Materials spilled, lost or having undergone other mishap, including any materials, equipment, etc, contaminated as a result of the mishap.
- 5 Materials contaminated or soiled as a result of planned actions (e.g. residues from cleaning operations, packing materials, containers, etc.).
- 6 Unusable parts (e.g. reject batteries, exhausted catalysts, etc.).
- 7 Substances which no longer perform satisfactorily (e.g. contaminated acids, contaminated solvents, exhausted tempering salts, etc.).
- 8 Residues of industrial processes (e.g. slags, still bottoms, etc.).
- 9 Residues from pollution abatement processes (e.g. scrubber sludges, baghouse dusts, spent filters, etc.).
- 10 Machining or finishing residues (e.g. lathe turnings, mill scales, etc.).
- 11 Residues from raw materials extraction and processing (e.g. mining residues, oil field slops, etc.).
- 12 Adulterated materials (e.g. oils contaminated with PCBs, etc.).
- 13 Any materials, substances or products whose use has been banned by law.
- 14 Products for which the holder has no further use (e.g. agricultural, household, office, commercial and shop discards, etc.).
- 15 Contaminated materials, substances or products resulting from remedial action with respect to land.
- 16 Any materials, substances or products which are not contained in the above categories.”

*The Natural Heritage (Scotland) Act 1991*

- 96 (1) The <sup>M57</sup>Natural Heritage (Scotland) Act 1991 shall be amended in accordance with the following provisions of this paragraph.
- (2) In section 15—

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- (a) in subsection (2) for the words “a river purification authority, acting in pursuance of their duties under section 17(1) of the Rivers (Prevention of Pollution) (Scotland) Act 1951” there shall be substituted the words “SEPA acting in pursuance of its duties under section 34(1) of the <sup>M58</sup>Environment Act 1995 ”;
  - (b) in subsection (3) for the words “said Act of” and “a river purification authority” where they first occur there shall be substituted the words “Rivers (Prevention of Pollution) (Scotland) Act ” and “SEPA ” respectively and the words “and a river purification authority of whom such a requirement is made shall make such an application” shall cease to have effect;
  - (c) for subsection (5) there shall be substituted—
    - “(5) A control area shall comprise an area or areas shown in a map or plan contained in the order.”
- (3) In section 17—
- (a) in subsection (1) for the words “A river purification authority” there shall be substituted the words “SEPA ”;
  - (b) in subsection (3) for the words “A river purification authority”, “their” in both places where it occurs, “they” and “the authority” there shall be substituted the words “SEPA ”, “its ”, “it ” and “SEPA ” respectively.
- (4) In section 18—
- (a) in subsection (1) for the words “a river purification authority” and “they” there shall be substituted the words “SEPA ” and “it ” respectively;
  - (b) in subsection (2) for the words “the river purification authority decide” there shall be substituted the words “SEPA decides ”;
  - (c) in subsection (3) for the words “a river purification authority” and “the authority” there shall be substituted the words “SEPA ” and “it ” respectively;
  - (d) in subsection (4) for the words “the river purification authority declare” there shall be substituted the words “SEPA declares ”;
  - (e) in subsection (5) for the words “A river purification authority” and “them” there shall be substituted the words “SEPA ” and “it ” respectively.
- (5) In section 24—
- (a) in subsection (1)—
    - (i) for the words “a river purification authority” there shall be substituted the words “SEPA ”; and
    - (ii) in paragraph (a), after the word “on” there shall be inserted the words “SEPA or ”; and
  - (b) in subsection (9)—
    - (i) for the words “a river purification authority or” there shall be substituted the words “SEPA or a ”; and
    - (ii) in paragraph (a), after the word “by” where it second occurs there shall be inserted the words “SEPA or ”.
- (6) After section 26 there shall be inserted—

**“26A Meaning of SEPA.**

In this Act “SEPA” means the Scottish Environment Protection Agency.”

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(7) In Schedule 5—

- (a) in paragraph 1 for the words “the river purification authority concerned consider” there shall be substituted the words “ SEPA considers ”;
- (b) in paragraph 2 for the words “the river purification authority concerned” there shall be substituted the words “ SEPA ” and the words “in their area and” shall cease to have effect;
- (c) in paragraph 3 for the words “the river purification authority” and “their” wherever they occur there shall be substituted the words “ SEPA ” and “ its ” respectively;
- (d) in paragraphs 4 and 9 for the words “the river purification authority” wherever they occur there shall be substituted the words “ SEPA ”.

(8) In Schedule 6—

- (a) in paragraph 1—
  - (i) in sub-paragraph (1) for the words “the river purification authority” there shall be substituted the words “ SEPA ”;
  - (ii) in sub-paragraph (2) for the words “A river purification authority”, “them”, “the authority” and “their” there shall be substituted respectively the words “ SEPA ”, “ it ”, “ it ” and “ its ” respectively;
  - (iii) in sub-paragraph (3) for the words “the river purification authority” there shall be substituted the words “ SEPA ”;
  - (iv) in sub-paragraph (4) for the words “the river purification authority”, “the authority fail” and “their” there shall be substituted the words “ SEPA ”, “ it fails ” and “ its ” respectively;
  - (v) sub-paragraph (5) shall cease to have effect;
  - (vi) in sub-paragraph (6) for the words “the river purification authority to whom the application has been made” there shall be substituted the words “ SEPA ”;
- (b) in paragraph 2—
  - (i) in sub-paragraph (1) for the words “the river purification authority” wherever they occur there shall be substituted the words “ SEPA ”;
  - (ii) in sub-paragraphs (3) and (4) for the words “the river purification authority” wherever they occur there shall be substituted the words “ SEPA ”;
  - (iii) at the end there shall be added—

“(6) This paragraph is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals etc).”;
- (c) in paragraph 3—
  - (i) in sub-paragraph (1) for the words “A river purification authority” there shall be substituted the words “ SEPA ”;
  - (ii) in sub-paragraph (2) for the words “A river purification authority” and “they are” there shall be substituted the words “ SEPA ” and “ it is ” respectively;
  - (iii) in sub-paragraph (4) for the words “the river purification authority” there shall be substituted the words “ SEPA ”;
  - (iv) in sub-paragraph (5) for the words “the river purification authority” and “them” there shall be substituted the words “ SEPA ” and “ it ” respectively;

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- (v) in sub-paragraph (6) for the words “the authority fail to intimate their” and “the river purification authority” there shall be substituted the words “ SEPA fails to intimate its ” and “ SEPA ” respectively;
  - (d) in paragraph 4 for the words “A river purification authority” and “them” there shall be substituted the words “ SEPA ” and “ it ” respectively;
  - (e) in paragraph 5(2) for the words “the river purification authority” there shall be substituted the words “ SEPA ”.
- (9) In Schedule 8, in paragraph 1—
- (a) for sub-paragraph (1) there shall be substituted—
    - “(1) Before making an application for a drought order, the applicant shall consult—
    - (a) SEPA, in a case where notice of the application is required to be served on it under this paragraph; and
    - (b) any district salmon fishery board on whom notice of the application is required to be served under this paragraph.”;
  - (b) in sub-paragraph (3), in the second column of the Table, in the fourth entry (relating to orders concerning the taking of water from a source or the discharge of water to a place), in paragraph (a) the words “, river purification authority” shall cease to have effect and at the end there shall be added—
    - “(c) SEPA.”;
  - (c) in sub-paragraph (3), in the second column of the Table, in the fifth entry (relating to orders which authorise the execution of any works) for the words “every river purification authority and” there shall be substituted the words “ SEPA and every ”.

**Marginal Citations**

**M57** 1991 c. 56.

**M58** 1995 c. 25.

*The Water Industry Act 1991*

- 97 In section 3 of the <sup>M59</sup>Water Industry Act 1991 (general environmental and recreational duties) in subsection (4) (which imposes duties on the Director and relevant undertakers in relation to proposals relating to functions of the National Rivers Authority etc) for the words “the NRA”, in each place where they occur, there shall be substituted the words “ the Environment Agency ”.

**Marginal Citations**

**M59** 1991 c. 57.

- 98 In section 5 of that Act (codes of practice with respect to environmental duties) in subsection (4), in paragraph (a) (which requires consultation with the National Rivers Authority) for the words “the NRA” there shall be substituted the words “ the Environment Agency ”.
- 99 In section 40 of that Act (bulk supplies of water) in subsection (5) (which requires the Director to consult the National Rivers Authority before making an order)



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- for the words “the NRA” there shall be substituted the words “ the Environment Agency ”.
- 100 In section 40A of that Act (variation and termination of bulk supply agreements) in subsection (3) (which requires the Director to consult the National Rivers authority before making an order) for the words “the NRA” there shall be substituted the words “ the Environment Agency ”.
- 101 (1) In section 71 of that Act (waste from water resources) in subsection (6) (power of court to authorise the National Rivers Authority to take steps to execute an order) for the words “the NRA” there shall be substituted—
- (a) where it first occurs, the words “the Environment Agency”; and
  - (b) where it next occurs, the words “the Agency”.
- (2) In subsection (7) (powers of entry etc of persons designated by the National Rivers Authority) for the words “the NRA” in each place where it occurs there shall be substituted the words “ the Environment Agency ”.
- 102 After section 93 of that Act (interpretation of Part III) there shall be inserted—

### “PART IIIA

#### PROMOTION OF THE EFFICIENT USE OF WATER

##### **93A Duty to promote the efficient use of water.**

- (1) It shall be the duty of every water undertaker to promote the efficient use of water by its customers.
- (2) The duty of a water undertaker under this section shall be enforceable under section 18 above—
  - (a) by the Secretary of State; or
  - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.
- (3) Nothing in this Part shall have effect to authorise or require a water undertaker to impose any requirement on any of its customers or potential customers.

##### **93B Power of Director to impose requirements on water undertakers.**

- (1) The Director may require a water undertaker, in its performance of its duty under section 93A above, to—
  - (a) take any such action; or
  - (b) achieve any such overall standards of performance,as he may specify in the document imposing the requirement.
- (2) Where the Director, in the document imposing a requirement on a water undertaker under subsection (1) above, stipulates that any contravention of the requirement by the undertaker will be a breach of its duty under section 93A above, any contravention of that requirement by the undertaker shall be a breach of that duty.

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- (3) Without prejudice to the generality of subsection (1) above, a requirement under that subsection may—
  - (a) require a water undertaker to make available to its customers or potential customers such facilities as may be specified in the document imposing the requirement;
  - (b) require a water undertaker to provide or make available to its customers or potential customers such information as may be specified in the document imposing the requirement, and may specify the form in which, the times at which or the frequency with which any such information is to be provided or made available.
- (4) In exercising his powers under this section in relation to any water undertaker the Director shall have regard to the extent to which water resources are available to that undertaker.
- (5) Before imposing any requirement on a water undertaker under subsection (1) above the Director shall consult that undertaker.
- (6) Nothing in this section authorises the Director to impose any requirement on a water undertaker which has or may have the effect of authorising or requiring that undertaker to impose any requirement on any of its customers or potential customers.

### **93C Publicity of requirements imposed under section 93B.**

- (1) Where, under section 93B(1) above, the Director imposes any requirement on a water undertaker, the Director may arrange for that requirement to be publicised in any such manner as he may consider appropriate for the purpose of bringing it to the attention of that undertaker's customers.
- (2) Without prejudice to the generality of subsection (1) above, the Director may arrange for such publicising of the requirement as is mentioned in that subsection by—
  - (a) himself publicising the requirement or causing it to be publicised; or
  - (b) directing the undertaker to inform or arrange to inform its customers of the requirement.

### **93D Information as to compliance with requirements under section 93B.**

- (1) Where a water undertaker is subject to any requirement imposed under section 93B(1) above, the Director may arrange for there to be given to the customers of that undertaker at any such times or with such frequency, and in any such manner, as he may consider appropriate, such information about the level of performance achieved by the undertaker in relation to that requirement as appears to the Director to be expedient to be given to those customers.
- (2) Without prejudice to the generality of subsection (1) above, the Director may arrange for such giving of information as is mentioned in that subsection by—
  - (a) himself disseminating the information or causing it to be disseminated; or

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- (b) directing the undertaker to give or arrange to give the information to its customers.
- (3) At such times and in such form or manner as the Director may direct, a water undertaker shall provide the Director with such information as may be specified in the direction in connection with the undertaker's performance in relation to any requirement imposed upon the undertaker under section 93B(1) above.
- (4) A water undertaker who fails without reasonable excuse to do anything required of him by virtue of subsection (3) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.”
- 103 After section 101 of that Act (which provides for the determination of certain details in relation to requisitioned sewers) there shall be inserted—

*“ Provision of public sewers otherwise than by requisition*

**101A Further duty to provide sewers.**

- (1) Without prejudice to section 98 above, it shall be the duty of a sewerage undertaker to provide a public sewer to be used for the drainage for domestic sewerage purposes of premises in a particular locality in its area if the conditions specified in subsection (2) below are satisfied.
- (2) The conditions mentioned in subsection (1) above are—
- (a) that the premises in question, or any of those premises, are premises on which there are buildings each of which, with the exception of any shed, glasshouse or other outbuilding appurtenant to a dwelling and not designed or occupied as living accommodation, is a building erected before, or whose erection was substantially completed by, 20th June 1995;
- (b) that the drains or sewers used for the drainage for domestic sewerage purposes of the premises in question do not, either directly or through an intermediate drain or sewer, connect with a public sewer; and
- (c) that the drainage of any of the premises in question in respect of which the condition specified in paragraph (a) above is satisfied is giving, or is likely to give, rise to such adverse effects to the environment or amenity that it is appropriate, having regard to any guidance issued under this section by the Secretary of State and all other relevant considerations, to provide a public sewer for the drainage for domestic sewerage purposes of the premises in question.
- (3) Without prejudice to the generality of subsection (2)(c) above, regard shall be had to the following considerations, so far as relevant, in determining whether it is appropriate for any sewer to be provided by virtue of this section—
- (a) the geology of the locality in question or of any other locality;

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- (b) the number of premises, being premises on which there are buildings, which might reasonably be expected to be drained by means of that sewer;
  - (c) the costs of providing that sewer;
  - (d) the nature and extent of any adverse effects to the environment or amenity arising, or likely to arise, as a result of the premises or, as the case may be, the locality in question not being drained by means of a public sewer; and
  - (e) the extent to which it is practicable for those effects to be overcome otherwise than by the provision (whether by virtue of this section or otherwise) of public sewers, and the costs of so overcoming those effects.
- (4) Guidance issued by the Secretary of State under this section may—
- (a) relate to how regard is to be had to the considerations mentioned in paragraphs (a) to (e) of subsection (3) above;
  - (b) relate to any other matter which the Secretary of State considers may be a relevant consideration in any case and to how regard is to be had to any such matter;
  - (c) set out considerations, other than those mentioned in paragraphs (a) to (e) of subsection (3) above, to which (so far as relevant) regard shall be had in determining whether it is appropriate for any sewer to be provided by virtue of this section;
  - (d) relate to how regard is to be had to any such consideration as is mentioned in paragraph (c) above;
  - (e) without prejudice to paragraphs (a) to (d) above, relate to how a sewerage undertaker is to discharge its functions under this section.
- (5) Before issuing guidance under this section the Secretary of State shall consult—
- (a) the Environment Agency;
  - (b) the Director; and
  - (c) such other bodies or persons as he considers appropriate;
- and the Secretary of State shall arrange for any guidance issued by him under this section to be published in such manner as he considers appropriate.
- (6) Subject to the following provisions of this section, the duty of a sewerage undertaker by virtue of subsection (1) above shall be enforceable under section 18 above—
- (a) by the Secretary of State; or
  - (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.
- (7) Any dispute between a sewerage undertaker and an owner or occupier of any premises in its area as to—
- (a) whether the undertaker is under a duty by virtue of subsection (1) above to provide a public sewer to be used for any such drainage of those premises as is mentioned in that subsection;
  - (b) the domestic sewerage purposes for which any such sewer should be provided; or

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- (c) the time by which any such duty of the undertaker should be performed,  
shall be determined by the Environment Agency, and may be referred to the Environment Agency for determination by either of the parties to the dispute.
- (8) The Environment Agency—
- (a) shall notify the parties of the reasons for its decision on any dispute referred to it under subsection (7) above; and
- (b) may make any such recommendations, or give any such guidance, relating to or in connection with the drainage of the premises or locality in question as it considers appropriate.
- (9) The decision of the Environment Agency on any dispute referred to it under subsection (7) above shall be final.
- (10) A sewerage undertaker shall only be taken to be in breach of its duty under subsection (1) above where, and to the extent that, it has accepted, or the Environment Agency has determined under this section, that it is under such a duty and where any time accepted by it, or determined by the Environment Agency under this section, as the time by which the duty is to that extent to be performed has passed.”.

#### Commencement Information

**I21** Sch. 22 para. 103 partly in force; Sch. 22 para. 103 not in force at Royal Assent see s. 125(3); Sch. 22 para. 103 in force for specified purposes at 1.2.1996 by S.I. 1996/186, art 2; Sch. 22 para. 103 in force at 1.4.1996 insofar as not already in force by S.I. 1996/186, art. 3

- 104 In section 110A of that Act (new connections with public sewers) in subsection (6) (which requires the Director to consult the National Rivers Authority before making an order) for the words “the NRA” there shall be substituted the words “ the Environment Agency ”.
- 105 (1) Section 120 of that Act (application for the discharge of special category effluent) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (sewerage undertakers to refer certain questions to the Secretary of State) for the words “the Secretary of State” there shall be substituted the words “ the Environment Agency ”.
- (3) In subsection (4) (undertaker not to give consent etc until Secretary of State gives notice of his determination of the questions) for the words “the Secretary of State” there shall be substituted the words “ the Environment Agency ”.
- (4) For subsections (7) and (8) (enforcement by Secretary of State) there shall be substituted—
- “(9) If a sewerage undertaker fails, within the period provided by subsection (2) above, to refer to the Environment Agency any question which he is required by subsection (1) above to refer to the Agency, the undertaker 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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- (10) If the Environment Agency becomes aware of any such failure as is mentioned in subsection (9) above, the Agency may—
- (a) if a consent under this Chapter to make discharges of any special category effluent has been granted on the application in question, exercise its powers of review under section 127 or 131 below, notwithstanding anything in subsection (2) of the section in question; or
  - (b) in any other case, proceed as if the reference required by this section had been made.”
- 106 In section 123 of that Act (appeals with respect to the discharge of special category effluent) for the words “the Secretary of State” or “the Secretary of State’s”, wherever occurring, there shall be substituted respectively the words “the Environment Agency ” or “ the Environment Agency’s ”.
- 107 In section 127 of that Act (review by the Secretary of State of consents relating to special category effluent) for the words “the Secretary of State” or “the Secretary of State’s”, wherever occurring, there shall be substituted respectively the words “ the Environment Agency ” or “ the Environment Agency’s ”.
- 108 (1) Section 130 of that Act (reference to the Secretary of State of agreements relating to special category effluent) shall be amended in accordance with the following provisions of this paragraph.
- (2) For the words “the Secretary of State”, wherever occurring, there shall be substituted the words “ the Environment Agency ”.
  - (3) For subsections (5) and (6) (enforcement by Secretary of State) there shall be substituted—
 

“(7) If a sewerage undertaker fails, before giving any consent or entering into any agreement with respect to any such operations as are mentioned in paragraph (a) of subsection (1) above, to refer to the Environment Agency any question which he is required by that subsection to refer to the Agency, the undertaker 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.
  - (8) If the Environment Agency becomes aware—
    - (a) that a sewerage undertaker and the owner or occupier of any trade premises are proposing to enter into any such agreement as is mentioned in subsection (1) above, and
    - (b) that the sewerage undertaker has not referred to the Agency any question which it is required to refer to the Agency by that subsection,

the Agency may proceed as if the reference required by that subsection had been made.
  - (9) If the Environment Agency becomes aware that any consent has been given or agreement entered into with respect to any such operations as are mentioned in paragraph (a) of subsection (1) above without the sewerage undertaker in question having referred to the Environment Agency any question which he is required by that subsection to refer to the Agency, the

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Agency may exercise its powers of review under section 127 above or, as the case may be, section 131 below, notwithstanding anything in subsection (2) of the section in question.”

- 109 In section 131 of that Act (review by the Secretary of State of agreements relating to special category effluent) for the words “the Secretary of State” or “the Secretary of State’s”, wherever occurring, there shall be substituted respectively the words “the Environment Agency ” or “ the Environment Agency’s ”.
- 110 (1) Section 132 of that Act (powers and procedure on references and reviews) shall be amended in accordance with the following provisions of this paragraph.
- (2) For the words “the Secretary of State”, wherever occurring, there shall be substituted the words “ the Environment Agency ”.
- (3) In subsection (2)(b) of that section (duty of the Secretary of State to consider representations or objections duly made to him) for the words “him” and “he” there shall be substituted the word “ the Agency ”.
- (4) In subsection (6) of that section (section 121(1) and (2) not to restrict power to impose conditions under subsection (4)(b)) for the word “he” there shall be substituted the words “ the Agency ”.
- (5) Subsection (7) (powers of entry) shall cease to have effect.
- 111 In section 133 of that Act (effect of determination on reference or review) for subsection (4) (duties of sewerage undertaker to be enforceable under section 18 by the Secretary of State) there shall be substituted—
- “(5) A sewerage undertaker which fails to perform its duty under 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.
- (6) The Environment Agency may, for the purpose of securing compliance with the provisions of a notice under section 132 above, by serving notice on the sewerage undertaker in question and on the person specified in section 132(2)(a)(ii) above, vary or revoke—
- (a) any consent given under this Chapter to make discharges of any special category effluent, or
- (b) any agreement under section 129 above.”
- 112 In section 134 of that Act (compensation in respect of determinations made for the protection of public health etc)—
- (a) for the words “the Secretary of State” or “the Secretary of State’s”, wherever occurring, there shall be substituted respectively the words “ the Environment Agency ” or “ the Environment Agency’s ”; and
- (b) in subsection (2)(b) for the word “him” there shall be substituted the words “ the Agency ”.
- 113 After section 135 there shall be inserted—

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**“135A Power of the Environment Agency to acquire information for the purpose of its functions in relation to special category effluent.**

- (1) For the purpose of the discharge of its functions under this Chapter, the Environment Agency may, by notice in writing served on any person, require that person to furnish such information specified in the notice as that Agency reasonably considers it needs, in such form and within such period following service of the notice, or at such time, as is so specified.
- (2) A person who—
  - (a) fails, without reasonable excuse, to comply with a requirement imposed under subsection (1) above, or
  - (b) in furnishing any information in compliance with such a requirement, makes any statement which he knows to be false or misleading in a material particular, or recklessly makes a statement which is false or misleading in a material particular,
 shall be guilty of an offence.
- (3) A person guilty of an offence under subsection (2) above shall be liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.”

114 (1) Section 142 of that Act (powers of undertakers to charge) shall be amended in accordance with the following provisions of this paragraph.

(2) In subsection (2) (manner in which charging powers to be exercised) for the words “subsection (3)” there shall be substituted the words “ subsections (3) and (3A) ”.

(3) After subsection (3) (restriction on charging by agreement for trade effluent functions) there shall be inserted—

“(3A) The power of a sewerage undertaker to charge, by virtue of subsection (1) above, for any services provided in the course of carrying out its duty under section 101A(1) above shall be exercisable only by or in accordance with a charges scheme under section 143 below.”

115 In section 143 of that Act (charges schemes) after subsection (3) (charges which may be imposed in certain cases) there shall be inserted—

“(3A) A sewerage undertaker is under a duty to ensure that any charges scheme made by the undertaker, so far as having effect to recover the undertaker’s costs of providing a sewer by virtue of its duty under section 101A(1) above, causes those costs to be borne by the undertaker’s customers generally; and a sewerage undertaker’s duty under this subsection shall be enforceable under section 18 above—

- (a) by the Secretary of State; or
- (b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by the Director.”

116 Section 151 of that Act shall cease to have effect.



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- 117 In section 161 of that Act (power to deal with foul water and pollution) in subsections (3) and (4) for the words “the NRA”, wherever occurring, there shall be substituted the words “ the Environment Agency ”.
- 118 In section 166 of that Act (consents for certain discharges under section 165) in subsection (1) (which requires the consent of the National Rivers Authority to certain discharges) for the words “the NRA” there shall be substituted the words “ the Environment Agency ”.
- 119 In section 184 of that Act (power of certain undertakers to alter public sewers etc) in subsection (1) for the words “NRA”, in each place where it occurs, there shall be substituted the words “ Environment Agency ”.
- 120 In section 202 of that Act (duties of undertakers to furnish the Secretary of State with information) in subsection (6) (which defines the expression “the other consolidation Acts”) for the words “the NRA” there shall be substituted the words “ the Environment Agency ”.
- 121 (1) In section 206 of that Act (restriction on disclosure of information) in subsection (2) (information furnished under section 196 or 204) the words “196 or” shall cease to have effect.
- (2) In subsection (3)(a) of that section (exception for disclosure of information for purposes of functions under certain enactments)—
- (a) for the words “the NRA” there shall be substituted the words “ the Environment Agency, the Scottish Environment Protection Agency ”; and
- (b) for the words “or the Water Act 1989” there shall be substituted the words “ , <sup>M60</sup>the Water Act 1989, Part I or IIA of the Environmental Protection Act 1990 or the <sup>M61</sup>Environment Act 1995 ”.
- (3) In subsection (4), in paragraph (a) (which provides that nothing in subsection (1) shall limit the matters which may be included in reports made by specified bodies under specified enactments)—
- (a) for the words “the NRA” there shall be substituted the words “ the Environment Agency, the Scottish Environment Protection Agency ”; and
- (b) for the words “or of the Water Resources Act 1991” there shall be substituted the words “ , Part I or IIA of <sup>M62</sup>the Environmental Protection Act 1990, the <sup>M63</sup>Water Resources Act 1991 or the <sup>M64</sup>Environment Act 1995 ”.

#### Marginal Citations

**M60** 1989 c. 15.

**M61** 1995 c. 25.

**M62** 1990 c. 43.

**M63** 1991 c. 57.

**M64** 1995 c. 25.

- 122 In section 209 of that Act (civil liability of undertakers for escapes of water etc) in subsection (3) (exceptions for loss sustained by other public undertakers) for the words “the NRA” there shall be substituted the words “ the Environment Agency ”.
- 123 In section 215 of that Act (local inquiries) in subsection (3) (application of section 250(4) of the <sup>M65</sup>Local Government Act 1972 in relation to the National

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Rivers Authority) for the words “the NRA”, in each place where they occur, there shall be substituted the words “ the Environment Agency ”.

**Marginal Citations**

**M65** 1972 c. 70.

- 124 In section 217 of that Act (construction of provisions conferring powers by reference to undertakers’ functions) for the words “NRA”, wherever occurring, there shall be substituted the words “ Environment Agency ”.
- 125 In section 219 of that Act (general interpretation) in subsection (1)—
- (a) the definition of “the NRA” shall be omitted; and
  - (b) subject to that, for the words “the NRA”, wherever occurring, there shall be substituted the words “ the Environment Agency ”.
- 126 In Schedule 11 to that Act (orders conferring compulsory works powers) in paragraph 1(3) (persons on whom copy notices are to be served) in paragraph (a), for the words “the NRA” there shall be substituted the words “ the Environment Agency ”.
- 127 In Schedule 13 to that Act (protective provisions in respect of certain undertakers) in paragraph 1, in sub-paragraphs (2) and (5)(a), for the words “the NRA”, wherever occurring, there shall be substituted the words “ the Environment Agency ”.

*The Water Resources Act 1991*

- 128 Subject to the other provisions of this Act, in the <sup>M66</sup>Water Resources Act 1991, for the word “Authority” or “Authority’s”, wherever occurring, other than in section 119(1), there shall be substituted respectively the word “ Agency ” or “ Agency’s ”.

**Marginal Citations**

**M66** 1991 c. 57.

- 129 Sections 1 to 14 of that Act (the National Rivers Authority and committees with functions in relation to that Authority) shall cease to have effect.
- 130 In section 15 of that Act (general duties with respect to the water industry), in subsection (2)(a) (provisions conferring powers in the exercise of which the Ministers are to take into account the duties imposed on the Agency by subsection (1)) after the words “by virtue of” there shall be inserted the words “ the 1995 Act, ”.
- 131 Sections 16 to 19 of that Act (which relate to the environmental and recreational duties of the National Rivers Authority and the general management of resources by that Authority) shall cease to have effect.
- 132 In section 20 of that Act (water resources management schemes) in subsection (1) of that section (duty to enter into arrangements with water undertakers for the management or operation of certain waters etc) for the words “section 19(1) above” there shall be substituted the words “ section 6(2) of the 1995 Act ”.

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- 133 (1) In section 21 of that Act (minimum acceptable flows) in subsection (3), at the end of paragraph (f) (consultation with person authorised by a licence under Part I of the <sup>M67</sup>Electricity Act 1989 to generate electricity) there shall be added the words “ who has a right to abstract water from those waters ”.
- (2) In subsection (4)(b) of that section (which refers to certain enactments which are repealed, but whose effect is reproduced, by this Act) for the words “sections 2(2), 16 and 17 above” there shall be substituted the words “ sections 6(1), 7 and 8 of the 1995 Act ”.

#### Commencement Information

**I22** Sch. 22 para. 133 wholly in force at 1.4.1996; Sch. 22 para. 133 not in force at Royal Assent see s. 125(3); Sch. 22 para. 133(1) in force at 21.9.1995 by [S.I. 1995/1983, art. 3](#); Sch. 22 para. 133(2) in force at 1.4.1996 by [S.I. 1996/186, art. 3](#)

#### Marginal Citations

**M67** 1989 c. 15.

- 134 In section 43 of that Act (appeals to the Secretary of State from decisions with respect to licences) after subsection (1) there shall be inserted—
- “(1A) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).”

#### PROSPECTIVE

- 135 (1) In section 50 of that Act, in subsection (1) (power to make regulations, in relation to cases to which section 49 applies, for conferring succession rights to abstraction licences where a person becomes the occupier of part of the relevant land) for the words “cases to which section 49 above applies” there shall be substituted the words “ 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”) ”.
- (2) That section shall have effect, and be taken always to have had effect, as if it had originally been enacted with the amendment made by sub-paragraph (1) above.
- 136 Section 58 (revocation of licence for non-payment of charges) shall cease to have effect.
- 137 Section 68 of that Act (power by order to establish a tribunal to which certain appeals and references shall lie) shall cease to have effect.
- 138 Section 69(5) of that Act (which refers to the tribunal established under section 68) shall cease to have effect.
- 139 (1) Section 73 of that Act (power to make ordinary and emergency drought orders) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (power to make ordinary drought orders) for the words from the beginning to “then” there shall be substituted the words—

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“(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,”.

(3) In subsection (3) (power to make drought order not to be exercisable except where an application is made by the National Rivers Authority or a water undertaker)—

- (a) for the words “except where” there shall be substituted the word “unless”;
- and
- (b) at the beginning of paragraph (b) (water undertakers) there shall be inserted the words “except in the case of an ordinary drought order by virtue of subsection (1)(b) above,”.

140 After section 79 of that Act (compensation and charges where drought order made) there shall be inserted—

**“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

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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;
  - (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).
- (8) For the purposes of sections 125 to 129 below any water authorised by a drought permit to be abstracted from a source of supply shall be treated as if it had been authorised to be so abstracted by a licence granted under Chapter II of this Part, whether the water undertaker to which the permit is issued is the holder of such a licence or not.
- (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.

*Status: Point in time view as at 27/05/1997. This version of this  
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*Changes to legislation: Environment Act 1995, SCHEDULE 22 is up to date with all changes known to be in  
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(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.”

141 In section 80 of that Act (offences against drought orders)—

(a) in subsection (1)(a) (taking or using water otherwise than in accordance  
 with any condition or restriction imposed by or under a drought order) for  
 the words “so imposed” there shall be substituted the words “imposed by  
 or under any drought order or by any drought permit”;

(b) in subsection (2)(a) (failure to construct or maintain measuring apparatus  
 required by any drought order) after the words “by any drought order” there  
 shall be inserted the words “or drought permit”; and

(c) in subsection (2)(b) (failure to allow person authorised by or under any  
 such order to inspect etc apparatus or records) after the words “by or under  
 any such order” there shall be inserted the words “or by virtue of any such  
 permit”.

142 After section 90 of that Act (offences in connection with deposits and vegetation  
 in rivers) there shall be inserted—

*“ Consents for the purposes of sections 88 to 90*

### **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.

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## **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.”

### **Commencement Information**

**I23** Sch. 22 para. 142 wholly in force at 31.12.1996; Sch. 22 para. 142 not in force at Royal Assent see s. 125(3); Sch. 22 para. 142 in force for specified purposes at 21.11.1996 by [S.I. 1996/2909](#), [art. 2](#) (with [art. 4](#)); Sch. 22 para. 142 in force at 31.12.1996 insofar as not already in force by [S.I. 1996/2909](#), [art. 3](#) (subject to [art. 4](#))

- 143 (1) In section 91 of that Act (appeals in respect of consents under Chapter II of Part III of that Act), in subsection (1) (which specifies the decisions which are subject to appeal)—

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- (a) in paragraph (d) (which refers to paragraph 7(1) or (2) of Schedule 10) for the words “7(1)” there shall be substituted the words “8(1)”; and
  - (b) at the end there shall be added—
    - “(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) In subsection (2) of that section (persons who may appeal)—
- (a) after the words “who applied for the consent” there shall be inserted the words “or variation”; and
  - (b) after the words “would be authorised by the consent” there shall be inserted the words “, or the person on whom the enforcement notice was served,”.
- (3) For subsections (3) to (7) of that section there shall be substituted—
- “(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,



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- (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.”

(4) In subsection (8) of that section (which refers to paragraph 5 of Schedule 10) for the word “5” there shall be substituted the word “6”.

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#### **Commencement Information**

**I24** Sch. 22 para. 143 wholly in force at 31.12.1996; Sch. 22 para. 143 not in force at Royal Assent see s. 125(3); Sch. 22 para. 143 in force for specified purposes at 21.11.1996 by [S.I. 1996/2909](#), [art. 2](#) (with [art. 4](#)); Sch. 22 para. 143 in force at 31.12.1996 insofar as not already in force by [S.I. 1996/2909](#), [art. 3](#) (subject to [art. 4](#))

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- 144 In section 92 of that Act (requirements to take precautions against pollution) after subsection (2) (which includes provision for regulations to provide for appeals to the Secretary of State) there shall be added—
- “(3) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).”
- 145 In section 96 of that Act (regulations with respect to consents required by virtue of section 93 etc, including provision with respect to appeals) after subsection (3) there shall be added—
- “(4) This section is subject to section 114 of the 1995 Act (delegation or reference of appeals etc).”
- 146 Section 105(1) of that Act (National Rivers Authority to exercise general supervision over matters relating to flood defence) shall cease to have effect.
- 147 (1) In section 110 of that Act (applications for consents and approvals under section 109) in subsection (1) (which confers power to charge an application fee of £50 or such other sum as may be specified by order made by the Ministers) for the words “specified by order made by the Ministers” there shall be substituted the word “prescribed”.
- (2) In subsection (4)(b) of that section (which provides for questions as to unreasonable withholding of any consent or approval to be referred to the Ministers or the Secretary of State if the parties cannot agree on an arbitrator) for the words “the Ministers” there shall be substituted the words “the Minister”.
- (3) After subsection (5) of that section there shall be inserted—
- “(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.”
- 148 Section 114 (general fisheries duty of the National Rivers Authority) shall cease to have effect.
- 149 Section 117 (general financial duties of the National Rivers Authority) shall cease to have effect.
- 150 (1) Section 118 of that Act (special duties with respect to flood defence revenue) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1)(b) (such revenue to be disregarded in determining the amount of any surplus for the purposes of section 117(3)) for the words “section 117(3) above” there shall be substituted the words “section 44(4) of the 1995 Act”.
- (3) In subsection (2)(b) (flood defence revenue to include revenue raised by general drainage charges under sections 134 to 136) for the words “to 136” there shall be substituted the words “and 135”.
- 151 (1) In section 119 of that Act (duties with respect to certain funds raised under local enactments) for subsection (1) (duty of the National Rivers Authority, in respect of funds created for fishery purposes under local enactments, not to use those funds except for the purposes for which they could have been used if the <sup>M68</sup>Water Resources Act 1963 had not been passed) there shall be substituted—

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“(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) In subsection (2) of that section (certain funds raised under local enactments to be disregarded in determining the amount of any surplus for the purposes of section 117(3)) for the words “section 117(3) above” there shall be substituted the words “section 44(3) of the 1995 Act”.

#### Marginal Citations

M68 1963 c. 38.

- 152 Sections 121 to 124 of that Act (accounts of the Authority, audit and schemes imposing water resources charges) shall cease to have effect.
- 153 Sections 126(6) and 129(4) of that Act (each of which applies section 68) shall cease to have effect.
- 154 Sections 131 and 132 of that Act (schemes of charges in connection with control of pollution) shall cease to have effect.
- 155 Section 146 of that Act (revenue grants by the Secretary of State to the National Rivers Authority) shall cease to have effect.
- 156 Sections 150 to 153 of that Act (grants for national security purposes, borrowing powers of the National Rivers Authority, loans to the Authority, and Treasury guarantees of the Authority’s borrowing) shall cease to have effect.
- 157 In section 154 of that Act (compulsory purchase etc) in subsection (6), for the words “(including section 4 above) or otherwise” there shall be substituted the words “or otherwise (including section 37 of the 1995 Act (incidental general powers of the Agency))”.
- 158 In section 156 of that Act (acquisition of land etc for fisheries purposes) for the words “Without prejudice to section 4 above”, in each place where they occur, there shall be substituted the words “Without prejudice to section 37 of the 1995 Act (incidental general powers of the Agency)”.
- 159 In section 157 of that Act (restriction on disposals of compulsorily acquired land) for subsection (6) (meaning of “compulsorily acquired land”) there shall be substituted—
- “(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;

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- (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>M69</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>M70</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.”

#### Marginal Citations

**M69** 1989 c. 15.

**M70** 1989 c. 29.

- 160 In section 158 of that Act (works agreements for water resources purposes) in subsection (1) (which is expressed to be without prejudice to the generality of the powers conferred by section 4) for the words “section 4 above” there shall be substituted the words “section 37 of the 1995 Act (incidental general powers of the Agency)”.

VALID FROM 29/04/1999

- 161 (1) Section 161 of that Act (anti-pollution works and operations) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (power, subject to subsection (2), to carry out works and operations etc) for the words “Subject to subsection (2) below,” there shall be substituted the words “Subject to subsections (1A) and (2) below.”
- (3) After that subsection there shall be inserted—
- “(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

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- (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.”

162 After that section there shall be inserted—

**“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;

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- (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.
- (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>M71</sup>Mines and Quarries Act 1954.

### **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.

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- (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,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>M72</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.

### **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.

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- (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)—
  - (a) include provisions comparable to those in section 290 of the <sup>M73</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).

#### **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 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.



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(5) In this section “works notice” means a works notice under section 161A above.”

#### Commencement Information

**I25** Sch. 22 para. 162 wholly in force at 29.4.1999; Sch. 22 para. 162 not in force at Royal Assent see s. 125(3); Sch. 22 para. 162 in force for specified purposes at 21.9.1995 by [S.I. 1995/1983, art. 3](#); Sch. 22 para. 162 in force for further specified purposes at 16.3.1999 by [S.I. 1999/803, art. 2](#); Sch. 22 para. 162 in force at 29.4.1999 insofar as not already in force by [S.I. 1999/1301, art. 2](#)

#### Marginal Citations

**M71** 1954 c. 70.

**M72** 1990 c. 43.

**M73** 1936 c. 49.

VALID FROM 29/04/1999

- 163 In section 162 of that Act (other powers to deal with foul water or pollution) in subsection (1) (which refers to section 161 of that Act) for the words “section 161” there shall be substituted the words “sections 161 to 161D”.
- 164 In section 166 of that Act (power to carry out works for purposes of flood warning system) in subsection (1) (which is expressed to be without prejudice to the Agency’s other powers by virtue of section 4) for the words “section 4 above” there shall be substituted the words “section 37 of the 1995 Act (incidental general powers of the Agency)”.
- 165 In section 169 of that Act (powers of entry for enforcement purposes) at the beginning of subsection (3) there shall be inserted the words “Subject to subsection (4) below,” and after that subsection there shall be added—  
“(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.”
- 166 In section 172 of that Act (powers of entry for other purposes) at the beginning of subsection (3) there shall be inserted the words “Subject to subsection (3A) below,” and after that subsection there shall be added—  
“(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.”
- 167 In section 174 of that Act (impersonation of persons exercising powers of entry) in subsection (1) (which creates a summary offence punishable by a fine not exceeding level 4) for the words from “liable, on summary conviction,” onwards there shall be substituted the words “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.”
- 168 Section 187 of that Act (annual report of the Authority) shall cease to have effect.

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- 169 (1) Section 190 of that Act (pollution control register) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (1) (which requires a register to be kept containing prescribed particulars of the items there specified) after the words “prescribed particulars of” there shall be inserted the words “or relating to”.
- (3) Paragraph (d) of that subsection (which relates to certificates under paragraph 1(7) of Schedule 10) shall be omitted.
- (4) Paragraph (f) of that subsection, and the word “and” immediately preceding it, shall be omitted and at the end of that subsection there shall be added—
- “(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.”
- (5) In subsection (2) (registers to be available for inspection by, and facilities for obtaining copies of entries to be afforded to, the public) after paragraph (b) there shall be added the words— “ 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. ”
- (6) After subsection (3) there shall be added—
- “(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.”

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### Commencement Information

- I26** Sch. 22 para. 169 wholly in force at 31.12.1996; Sch. 22 para. 169 not in force at Royal Assent see s. 125(3); Sch. 22 para. 169 in force for specified purposes at 21.11.1996 by S.I. 1996/2909, art. 2 (with art. 4); Sch. 22 para. 169 in force at 31.12.1996 insofar as not already in force by S.I. 1996/2909, art. 3 (subject to art. 4)

170 After section 191 of that Act (register for the purposes of works discharges) there shall be inserted—

#### “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.

#### 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
  - (b) is not required to be included in the register in pursuance of directions under subsection (7) below;

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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.”

#### **Commencement Information**

**I27** Sch. 22 para. 170 wholly in force at 31.12.1996; Sch. 22 para. 170 not in force at Royal Assent see s. 125(3); Sch. 22 para. 170 in force for specified purposes at 21.11.1996 by [S.I. 1996/2909, art. 2](#) (with [art. 4](#)); Sch. 22 para. 170 in force at 31.12.1996 insofar as not already in force by [S.I. 1996/2909, art. 3](#) (subject to [art. 4](#))

- 171 Section 196 of that Act (provision of information by the Authority to Ministers) shall cease to have effect.
- 172 (1) In section 202 of that Act (information and assistance required in connection with the control of pollution) in subsection (4) (which creates a summary offence punishable by a fine not exceeding level 5 on the standard scale) for the words from “liable, on summary conviction,” onwards there shall be substituted the words “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.”
- (2) Subsection (5) of that section (which is superseded in consequence of the amendment made by sub-paragraph (1) above) shall cease to have effect.
- 173 (1) Section 204 of that Act (restriction on disclosure of information with respect to any particular business) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (2)(a) (exception for disclosure of information for purposes of functions under certain enactments)—
- (a) for the words “the Authority” there shall be substituted the words “the Agency, the Scottish Environment Protection Agency”; and
- (b) for the words “or the Water Act 1989” there shall be substituted the words “, the <sup>M74</sup>Water Act 1989, Part I or IIA of the <sup>M75</sup>Environmental Protection Act 1990 or the 1995 Act”.
- (3) In subsection (3), in paragraph (a) (which provides that nothing in subsection (1) shall limit the matters which may be included in reports made by specified bodies under specified enactments)—
- (a) after sub-paragraph (i), there shall be inserted—
- “(ia) the Scottish Environment Protection Agency;” and
- (b) for the words “or that Act of 1991” there shall be substituted the words “, Part I or IIA of the <sup>M76</sup>Environmental Protection Act 1990, that Act of 1991 or the 1995 Act”.
- (4) In paragraph (b) of that subsection, after the words “that Act” there shall be inserted the words “of 1991”.

#### **Marginal Citations**

**M74** 1989 c. 15.

**M75** 1989 c. 15.

**M76** 1990 c. 43.

- 174 Sections 213 to 215 of that Act (local inquiries) shall cease to have effect.
- 175 Section 218 of that Act (no judicial disqualification by virtue of liability to pay charges to the Authority) shall cease to have effect.
- 176 In section 219 of that Act (powers to make regulations)—
- (a) in subsection (2), the words “Subject to subsection (3) below,” and
- (b) subsection (3) (which restricts certain powers to make regulations), shall cease to have effect.
- 177 (1) Section 221(1) of that Act (general interpretation) shall be amended in accordance with the following provisions of this paragraph.
- (2) Before the definition of “abstraction” there shall be inserted—
- ““the 1995 Act” means the Environment Act 1995;”.
- (3) After the definition of “accessories” there shall be inserted—

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““the Agency” means the Environment Agency;”.

(4) The definition of “the Authority” shall be omitted.

(5) The definition of “constituent council” shall be omitted.

(6) After the definition of “enactment” there shall be inserted—

““enforcement notice” has the meaning given by section 90B above;”.

(7) For the definition of “flood defence functions” there shall be substituted—

““flood defence functions”, in relation to the Agency, means—

- (a) its functions with respect to flood defence and land drainage by virtue of Part IV of this Act, the <sup>M77</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>M78</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;”.

(8) For the definition of “flood defence provisions” there shall be substituted—

““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, 147 to 149, 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;”.

(9) For the definition of “the related water resources provisions” there shall be substituted—

““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—
  - (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

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- (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);”.
- (10) In the definition of “water pollution provisions”—
- (a) in paragraph (b)—
    - (i) after the words “161” there shall be inserted the words “to 161D”; and
    - (ii) for the words “203 and 213(2) above” there shall be substituted the words “and 203”; and
  - (b) after paragraph (c), there shall be added the words— “ and the following provisions of the 1995 Act, that is to say, the provisions of subsections (1) and (2) of section 53. ”

**Marginal Citations**

**M77** 1991 c. 59.

**M78** 1989 c. 15.

- 178 Schedule 1 to that Act (the National Rivers Authority) shall cease to have effect.
- 179 Schedules 3 and 4 to that Act (boundaries of regional flood defence areas and membership and proceedings of regional and local flood defence committees) shall cease to have effect.
- 180 In Schedule 5 to that Act (procedure relating to statements on minimum acceptable flow) in paragraph 2(3)(g) (copy of notice to be served on person authorised by a licence under Part I of the <sup>M79</sup>Electricity Act 1989 to generate electricity) after the words “to generate electricity” there shall be added the words “who has a right to abstract water from any such waters or related inland waters”.

**Marginal Citations**

**M79** 1989 c. 29.

- 181 In Schedule 6 to that Act (orders providing for exemption from restrictions on abstraction) in paragraph 1(4)(h) (copy of notice to be served on person authorised by a licence under Part I of the Electricity Act 1989 to generate electricity) after the words “to generate electricity” there shall be added the words “who has a right to abstract water from any such source of supply or related inland waters”.
- 182 In Schedule 10 to that Act (discharge consents) after paragraph 7 (restriction on variation and revocation of consent and previous variation) there shall be added—

*“ General review of consents*

- 8 (1) If it appears appropriate to the Secretary of State to do so he may at any time direct the Authority to review—



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- (a) the consents given under paragraphs 2 and 5 above, or
  - (b) any description of such consents,
- and the conditions (if any) to which those consents are subject.
- (2) A direction given by virtue of sub-paragraph (1) above—
- (a) shall specify the purpose for which, and
  - (b) may specify the manner in which,
- the review is to be conducted.
- (3) After carrying out a review pursuant to a direction given by virtue of sub-paragraph (1) above, the Authority shall submit to the Secretary of State its proposals (if any) for—
- (a) the modification of the conditions of any consent reviewed pursuant to the direction, or
  - (b) in the case of any unconditional consent reviewed pursuant to the direction, subjecting the consent to conditions.
- (4) Where the Secretary of State has received any proposals from the Authority under sub-paragraph (3) above in relation to any consent he may, if it appears appropriate to him to do so, direct the Authority to do, in relation to that consent, anything mentioned in paragraph 6(2)(b) or (c) above.
- (5) A direction given by virtue of sub-paragraph (4) above may only direct the Authority to do, in relation to any consent,—
- (a) any such thing as the Authority has proposed should be done in relation to that consent, or
  - (b) any such thing with such modifications as appear to the Secretary of State to be appropriate.”

183 For that Schedule there shall be substituted—

“SCHEDULE 10

DISCHARGE CONSENTS

*Application for consent*

- 1 (1) An application for a consent, for the purposes of section 88(1)(a) of this Act, for any discharges—
- (a) shall be made to the Agency on a form provided for the purpose by the Agency; and
  - (b) must be advertised by or on behalf of the applicant in such manner as may be required by regulations made by the Secretary of State.
- (2) Regulations made by the Secretary of State may make provision for enabling the Agency to direct or determine that any such advertising of an application as is required under sub-paragraph (1)(b) above may, in any case, be dispensed with if, in that case, it appears to the Agency to be appropriate for that advertising to be dispensed with.
- (3) The applicant for such a consent must provide to the Agency, either on, or together with, the form mentioned in sub-paragraph (1) above—

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- (a) such information as the Agency may reasonably require; and
- (b) such information as may be prescribed for the purpose by the Secretary of State;

but, subject to paragraph 3(3) below and without prejudice to the effect (if any) of any other contravention of the requirements of this Schedule in relation to an application under this paragraph, a failure to provide information in pursuance of this sub-paragraph shall not invalidate an application.

- (4) The Agency may give the applicant notice requiring him to provide it with such further information of any description specified in the notice as it may require for the purpose of determining the application.
- (5) An application made in accordance with this paragraph which relates to proposed discharges at two or more places may be treated by the Agency as separate applications for consents for discharges at each of those places.

*Consultation in connection with applications*

- 2 (1) Subject to sub-paragraph (2) below, the Agency shall give notice of any application under paragraph 1 above, together with a copy of the application, to the persons who are prescribed or directed to be consulted under this paragraph and shall do so within the specified period for notification.
- (2) The Secretary of State may, by regulations, exempt any class of application from the requirements of this paragraph or exclude any class of information contained in applications from those requirements, in all cases or as respects specified classes only of persons to be consulted.
- (3) Any representations made by the persons so consulted within the period allowed shall be considered by the Agency in determining the application.
- (4) For the purposes of sub-paragraph (1) above—
  - (a) persons are prescribed to be consulted on any description of application if they are persons specified for the purposes of applications of that description in regulations made by the Secretary of State;
  - (b) persons are directed to be consulted on any particular application if the Secretary of State specifies them in a direction given to the Agency;
 and the “specified period for notification” is the period specified in the regulations or in the direction.
- (5) Any representations made by any other persons within the period allowed shall also be considered by the Agency in determining the application.
- (6) Subject to sub-paragraph (7) below, the period allowed for making representations is—
  - (a) in the case of persons prescribed or directed to be consulted, the period of six weeks beginning with the date on which notice of the application was given under sub-paragraph (1) above, and
  - (b) in the case of other persons, the period of six weeks beginning with the date on which the making of the application was advertised in pursuance of paragraph 1(1)(b) above.

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- (7) The Secretary of State may, by regulations, substitute for any period for the time being specified in sub-paragraph (6)(a) or (b) above, such other period as he considers appropriate.

*Consideration and determination of applications*

- 3 (1) On an application under paragraph 1 above the Agency shall be under a duty, if the requirements—
- (a) of that paragraph, and
  - (b) of any regulations made under paragraph 1 or 2 above or of any directions under paragraph 2 above,
- are complied with, to consider whether to give the consent applied for, either unconditionally or subject to conditions, or to refuse it.
- (2) Subject to the following provisions of this Schedule, on an application made in accordance with paragraph 1 above, the applicant may treat the consent applied for as having been refused if it is not given within the period of four months beginning with the day on which the application is received or within such longer period as may be agreed in writing between the Agency and the applicant.
- (3) Where any person, having made an application to the Agency for a consent, has failed to comply with his obligation under paragraph 1(3) or (4) above to provide information to the Agency, the Agency may refuse to proceed with the application, or refuse to proceed with it until the information is provided.
- (4) The conditions subject to which a consent may be given under this paragraph shall be such conditions as the Agency may think fit and, in particular, may include conditions—
- (a) as to the places at which the discharges to which the consent relates may be made and as to the design and construction of any outlets for the discharges;
  - (b) as to the nature, origin, composition, temperature, volume and rate of the discharges and as to the periods during which the discharges may be made;
  - (c) as to the steps to be taken, in relation to the discharges or by way of subjecting any substance likely to affect the description of matter discharged to treatment or any other process, for minimising the polluting effects of the discharges on any controlled waters;
  - (d) as to the provision of facilities for taking samples of the matter discharged and, in particular, as to the provision, maintenance and use of manholes, inspection chambers, observation wells and boreholes in connection with the discharges;
  - (e) as to the provision, maintenance and testing of meters for measuring or recording the volume and rate of the discharges and apparatus for determining the nature, composition and temperature of the discharges;
  - (f) as to the keeping of records of the nature, origin, composition, temperature, volume and rate of the discharges and, in particular, of records of readings of meters and other recording apparatus provided in accordance with any other condition attached to the consent; and

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- (g) as to the making of returns and the giving of other information to the Authority about the nature, origin, composition, temperature, volume and rate of the discharges;
- and it is hereby declared that a consent may be given under this paragraph subject to different conditions in respect of different periods.
- (5) The Secretary of State may, by regulations, substitute for any period for the time being specified in sub-paragraph (2) above, such other period as he considers appropriate.
- 4 The Secretary of State may give the Agency a direction with respect to any particular application, or any description of applications, for consent under paragraph 1 above requiring the Agency not to determine or not to proceed with the application or applications of that description until the expiry of any such period as may be specified in the direction, or until directed by the Secretary of State that it may do so, as the case may be.

*Reference to Secretary of State of certain applications for consent*

- 5 (1) The Secretary of State may, either in consequence of representations or objections made to him or otherwise, direct the Agency to transmit to him for determination such applications for consent under paragraph 1 above as are specified in the direction or are of a description so specified.
- (2) Where a direction is given to the Agency under this paragraph, the Agency shall comply with the direction and inform every applicant to whose application the direction relates of the transmission of his application to the Secretary of State.
- (3) Paragraphs 1(1) and 2 above shall have effect in relation to an application transmitted to the Secretary of State under this paragraph with such modifications as may be prescribed.
- (4) Where an application is transmitted to the Secretary of State under this paragraph, the Secretary of State may at any time after the application is transmitted and before it is granted or refused—
- (a) cause a local inquiry to be held with respect to the application; or
- (b) afford the applicant and the Agency an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.
- (5) The Secretary of State shall exercise his power under sub-paragraph (4) above in any case where a request to be heard with respect to the application is made to him in the prescribed manner by the applicant or by the Agency.
- (6) It shall be the duty of the Secretary of State, if the requirements of this paragraph and of any regulations made under it are complied with, to determine an application for consent transmitted to him by the Agency under this paragraph by directing the Agency to refuse its consent or to give its consent under paragraph 3 above (either unconditionally or subject to such conditions as are specified in the direction).
- (7) Without prejudice to any of the preceding provisions of this paragraph, the Secretary of State may by regulations make provision for the purposes of,

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and in connection with, the consideration and disposal by him of applications transmitted to him under this paragraph.

*Consents without applications*

- 6 (1) If it appears to the Agency—
- (a) that a person has caused or permitted effluent or other matter to be discharged in contravention—
    - (i) of the obligation imposed by virtue of section 85(3) of this Act; or
    - (ii) of any prohibition imposed under section 86 of this Act; and
  - (b) that a similar contravention by that person is likely,
- the Agency may, if it thinks fit, serve on him an instrument in writing giving its consent, subject to any conditions specified in the instrument, for discharges of a description so specified.
- (2) A consent given under this paragraph shall not relate to any discharge which occurred before the instrument containing the consent was served on the recipient of the instrument.
- (3) Sub-paragraph (4) of paragraph 3 above shall have effect in relation to a consent given under this paragraph as it has effect in relation to a consent given under that paragraph.
- (4) Where a consent has been given under this paragraph, the Agency shall publish notice of the consent in such manner as may be prescribed by the Secretary of State and send copies of the instrument containing the consent to such bodies or persons as may be so prescribed.
- (5) It shall be the duty of the Agency to consider any representations or objections with respect to a consent under this paragraph as are made to it in such manner, and within such period, as may be prescribed by the Secretary of State and have not been withdrawn.
- (6) Where notice of a consent is published by the Agency under sub-paragraph (4) above, the Agency shall be entitled to recover the expenses of publication from the person on whom the instrument containing the consent was served.

*Revocation of consents and alteration and imposition of conditions*

- 7 (1) The Agency may from time to time review any consent given under paragraph 3 or 6 above and the conditions (if any) to which the consent is subject.
- (2) Subject to such restrictions on the exercise of the power conferred by this sub-paragraph as are imposed under paragraph 8 below, where the Agency has reviewed a consent under this paragraph, it may by a notice served on the person making a discharge in pursuance of the consent—
- (a) revoke the consent;
  - (b) make modifications of the conditions of the consent; or
  - (c) in the case of an unconditional consent, provide that it shall be subject to such conditions as may be specified in the notice.

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- (3) If on a review under sub-paragraph (1) above it appears to the Agency that no discharge has been made in pursuance of the consent to which the review relates at any time during the preceding twelve months, the Agency may revoke the consent by a notice served on the holder of the consent.
- (4) If it appears to the Secretary of State appropriate to do so—
- (a) for the purpose of enabling Her Majesty’s Government in the United Kingdom to give effect to any Community obligation or to any international agreement to which the United Kingdom is for the time being a party;
  - (b) for the protection of public health or of flora and fauna dependent on an aquatic environment; or
  - (c) in consequence of any representations or objections made to him or otherwise,
- he may, subject to such restrictions on the exercise of the power conferred by virtue of paragraph (c) above as are imposed under paragraph 8 below, at any time direct the Agency, in relation to a consent given under paragraph 3 or 6 above, to do anything mentioned in sub-paragraph (2)(a) to (c) above.
- (5) The Agency shall be liable to pay compensation to any person in respect of any loss or damage sustained by that person as a result of the Agency’s compliance with a direction given in relation to any consent by virtue of sub-paragraph (4)(b) above if—
- (a) in complying with that direction the Agency does anything which, apart from that direction, it would be precluded from doing by a restriction imposed under paragraph 8 below; and
  - (b) the direction is not shown to have been given in consequence of—
    - (i) a change of circumstances which could not reasonably have been foreseen at the beginning of the period to which the restriction relates; or
    - (ii) consideration by the Secretary of State of material information which was not reasonably available to the Agency at the beginning of that period.
- (6) For the purposes of sub-paragraph (5) above information is material, in relation to a consent, if it relates to any discharge made or to be made by virtue of the consent, to the interaction of any such discharge with any other discharge or to the combined effect of the matter discharged and any other matter.

*Restriction on variation and revocation of consent and previous variation*

- 8 (1) Each instrument signifying the consent of the Agency under paragraph 3 or 6 above shall specify a period during which no notice by virtue of paragraph 7(2) or (4)(c) above shall be served in respect of the consent except, in the case of a notice doing anything mentioned in paragraph 7(2)(b) or (c), with the agreement of the holder of the consent.
- (2) Each notice served by the Agency by virtue of paragraph 7(2) or (4)(c) above (except a notice which only revokes a consent) shall specify a period during which a subsequent such notice which alters the effect of the first-mentioned notice shall not be served except, in the case of a notice doing

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anything mentioned in paragraph 7(2)(b) or (c) above, with the agreement of the holder of the consent.

- (3) The period specified under sub-paragraph (1) or (2) above in relation to any consent shall not, unless the person who proposes to make or makes discharges in pursuance of the consent otherwise agrees, be less than the period of four years beginning—
  - (a) in the case of a period specified under sub-paragraph (1) above, with the day on which the consent takes effect; and
  - (b) in the case of a period specified under sub-paragraph (2) above, with the day on which the notice specifying that period is served.
- (4) A restriction imposed under sub-paragraph (1) or (2) above shall not prevent the service by the Agency of a notice by virtue of paragraph 7(2) or (4)(c) above in respect of a consent given under paragraph 6 above if—
  - (a) the notice is served not more than three months after the beginning of the period prescribed under paragraph 6(5) above for the making of representations and objections with respect to the consent; and
  - (b) the Agency or, as the case may be, the Secretary of State considers, in consequence of any representations or objections received by it or him within that period, that it is appropriate for the notice to be served.
- (5) A restriction imposed under sub-paragraph (1) or (2) above shall not prevent the service by the Agency of a notice by virtue of paragraph 7(2)(b) or (c) or (4)(c) above in respect of a consent given under paragraph 6 above if the holder has applied for a variation under paragraph 10 below.

#### *General review of consents*

- 9 (1) If it appears appropriate to the Secretary of State to do so he may at any time direct the Agency to review—
  - (a) the consents given under paragraph 3 or 6 above, or
  - (b) any description of such consents,and the conditions (if any) to which those consents are subject.
- (2) A direction given by virtue of sub-paragraph (1) above—
  - (a) shall specify the purpose for which, and
  - (b) may specify the manner in which,the review is to be conducted.
- (3) After carrying out a review pursuant to a direction given by virtue of sub-paragraph (1) above, the Agency shall submit to the Secretary of State its proposals (if any) for—
  - (a) the modification of the conditions of any consent reviewed pursuant to the direction, or
  - (b) in the case of any unconditional consent reviewed pursuant to the direction, subjecting the consent to conditions.
- (4) Where the Secretary of State has received any proposals from the Agency under sub-paragraph (3) above in relation to any consent he may, if it appears appropriate to him to do so, direct the Agency to do, in relation to that consent, anything mentioned in paragraph 7(2)(b) or (c) above.

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- (5) A direction given by virtue of sub-paragraph (4) above may only direct the Agency to do, in relation to any consent,—
- (a) any such thing as the Agency has proposed should be done in relation to that consent, or
  - (b) any such thing with such modifications as appear to the Secretary of State to be appropriate.

*Applications for variation*

- 10 (1) The holder of a consent under paragraph 3 or 6 above may apply to the Agency, on a form provided for the purpose by the Agency, for the variation of the consent.
- (2) The provisions of paragraphs 1 to 5 above shall apply (with the necessary modifications) to applications under sub-paragraph (1) above, and to the variation of consents in pursuance of such applications, as they apply to applications for, and the grant of, consents.

*Transfer of consents*

- 11 (1) A consent under paragraph 3 or 6 above may be transferred by the holder to a person who proposes to carry on the discharges in place of the holder.
- (2) On the death of the holder of a consent under paragraph 3 or 6 above, the consent shall, subject to sub-paragraph (4) below, be regarded as property forming part of the deceased's personal estate, whether or not it would be so regarded apart from this sub-paragraph, and shall accordingly vest in his personal representatives.
- (3) If a bankruptcy order is made against the holder of a consent under paragraph 3 or 6 above, the consent shall, subject to sub-paragraph (4) below, be regarded for the purposes of any of the Second Group of Parts of the <sup>M80</sup>Insolvency Act 1986 (insolvency of individuals; bankruptcy), as property forming part of the bankrupt's estate, whether or not it would be so regarded apart from this sub-paragraph, and shall accordingly vest as such in the trustee in bankruptcy.
- (4) Notwithstanding anything in the foregoing provisions of this paragraph, a consent under paragraph 3 or 6 above (and the obligations arising out of, or incidental to, such a consent) shall not be capable of being disclaimed.
- (5) A consent under paragraph 3 or 6 above which is transferred to, or which vests in, a person under this section shall have effect on and after the date of the transfer or vesting as if it had been granted to that person under paragraph 3 or 6 above, subject to the same conditions as were attached to it immediately before that date.
- (6) Where a consent under paragraph 3 or 6 above is transferred under sub-paragraph (1) above, the person from whom it is transferred shall give notice of that fact to the Agency not later than the end of the period of twenty-one days beginning with the date of the transfer.
- (7) Where a consent under paragraph 3 or 6 above vests in any person as mentioned in sub-paragraph (2) or (3) above, that person shall give notice of



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that fact to the Agency not later than the end of the period of fifteen months beginning with the date of the vesting.

- (8) If—
- (a) a consent under paragraph 3 or 6 above vests in any person as mentioned in sub-paragraph (2) or (3) above, but
  - (b) that person fails to give the notice required by sub-paragraph (7) above within the period there mentioned,
- the consent, to the extent that it permits the making of any discharges, shall cease to have effect.
- (9) A person who fails to give a notice which he is required by sub-paragraph (6) or (7) above to give 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 or to imprisonment for a term not exceeding two years, or to both.”

#### Commencement Information

**I28** Sch. 22 para. 183 wholly in force at 31.12.1996; Sch. 22 para. 183 not in force at Royal Assent see s. 125(3); Sch. 22 para. 183 in force for specified purposes at 21.11.1996 by [S.I. 1996/2909, art. 2](#) (with [art. 4](#)); Sch. 22 para. 183 in force at 31.12.1996 insofar as not already in force by [S.I. 1996/2909, art. 3](#) (subject to [art. 4](#))

#### Marginal Citations

**M80** 1986 c. 45.

- 184 In Schedule 11 to that Act (water protection zone orders) in paragraph 4 (which is expressed to be without prejudice to section 213 of that Act) for the words “section 213 of this Act” there shall be substituted the words “section 53 of the 1995 Act (inquiries and other hearings)”.
- 185 In Schedule 12 to that Act (nitrate sensitive area orders) in paragraph 6 (which is expressed to be without prejudice to section 213 of that Act) for the words “section 213 of this Act” there shall be substituted the words “section 53 of the 1995 Act (inquiries and other hearings)”.

PROSPECTIVE

**F2**186 .....

#### Textual Amendments

**F2** Sch. 22 para. 186 repealed (E.W.) (6.4.2010) by [The Environmental Permitting \(England and Wales\) Regulations 2010 \(S.I. 2010/675\)](#), reg. 1(1)(b), [Sch. 28](#) (with reg. 1(2), Sch. 4)

- 187 (1) In Schedule 15 to that Act (supplemental provisions with respect to drainage charges) in paragraphs 4(3) and 9(4) (which specify the penalty for certain offences of failing, and after conviction continuing, without reasonable excuse, to comply with notices)

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after the words “he continues without reasonable excuse” there shall be inserted the words “to fail”.

- (2) In paragraph 12(2) of that Schedule (which is expressed to be without prejudice to powers by virtue of section 4 or paragraph 5 of Schedule 1) for the words “section 4 of this Act and paragraph 5 of Schedule 1 to this Act” there shall be substituted the words “section 37 of, and paragraph 6 of Schedule 1 to, the 1995 Act”.

#### Commencement Information

**I29** Sch. 22 para. 187 wholly in force at 1.4.1996; Sch. 22 para. 187 not in force at Royal Assent see s. 125(3); Sch. 22 para. 187(1) in force at 21.9.1995 by [S.I. 1995/1983, art. 3](#); Sch. 22 para. 187(2) in force at 1.4.1996 by [S.I. 1996/186, art. 3](#)

- 188 In Schedule 20 to that Act (supplemental provisions with respect to powers of entry) in paragraph 7 (which creates an offence of obstruction, punishable on summary conviction by a fine not exceeding level 3) for the words from “liable, on summary conviction,” onwards there shall be substituted the words “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.”
- 189 In Schedule 22 to that Act (protection for particular undertakings) in paragraph 5 (protection for telecommunication systems) for the words “section 4(1) of this Act” there shall be substituted the words “section 37 of the 1995 Act”.
- 190 In Schedule 25 to that Act (byelaw-making powers) in paragraph 1(1), for the words “paragraphs (a), (c) and (d) of section 2(1) of this Act” there shall be substituted the words “sub-paragraphs (i), (iii) and (v) of section 2(1)(a) of the 1995 Act”.

#### *The Land Drainage Act 1991*

- 191 In the <sup>M81</sup>Land Drainage Act 1991, for the words “NRA”, wherever occurring, there shall be substituted the word “ Agency ”.

#### Marginal Citations

**M81** 1991 c. 59.

- 192 (1) In section 23 of that Act (prohibition on obstructions etc in watercourses) in subsection (2) (which confers power to charge an application fee of £50 or such other sum as may be specified by order made by the Ministers) for the words “specified by order made by the Ministers” there shall be substituted the word “prescribed”.
- (2) After subsection (7) of that section there shall be inserted—
- “(7A) In subsection (2) 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.”
- 193 At the beginning of Part V of that Act (miscellaneous and supplemental provisions) there shall be inserted—

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*“Spray irrigation*

**Powers of internal drainage boards and local authorities to facilitate spray irrigation.**

61F (1) Any internal drainage board or local authority may, with the consent of the Agency, operate any drainage works under the control of the board or authority so as to manage the level of water in a watercourse for the purpose of facilitating spray irrigation.

(2) Subsection (1) above is without prejudice to—

- (a) the powers of an internal drainage board or local authority in relation to drainage; or
- (b) any requirement—
  - (i) for any other consent of the Agency or any other person; or
  - (ii) for any licence, approval, authorisation or other permission or registration.”

194 (1) In section 72 of that Act, in subsection (1) (general definitions) there shall be inserted at the appropriate place—

““the Agency” means the Environment Agency;”.

(2) In that subsection, the definition of “the NRA” shall be omitted.

*The Clean Air Act 1993*

195 In section 2 of the <sup>M82</sup>Clean Air Act 1993 (emission of dark smoke from industrial or trade premises) in subsection (5) (which creates a summary offence punishable with a fine not exceeding level 5 on the standard scale) for the words “level 5 on the standard scale” there shall be substituted the words “£20,000”.

**Marginal Citations**

M82 1993 c. 11.

196 (1) Section 19 of that Act (power to require creation of smoke control areas by local authorities) as it applies to Scotland shall be amended in accordance with the following provisions of this paragraph.

(2) In subsection (1)—

- (a) for the words “Secretary of State” there shall be substituted the words “Scottish Environment Protection Agency (in this section referred to as “the Agency”)”; and
- (b) for the words “he”, “him” and “his” there shall be substituted respectively “the Agency”, “it” and “its”.

(3) In subsections (2), (3), (4)(a) and (6), for the words “Secretary of State” there shall be substituted the words “Agency”.

(4) In subsection (3), for the word “him” there shall be substituted the word “it”.

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- (5) In subsection (4), before the words “the Secretary of State” in the second place where they occur there shall be inserted the words “the Agency, with the consent of”.
- 197 In section 59 of that Act (local inquiries) in subsection (1)—
- (a) for the words “a local inquiry” there shall be substituted the words “an inquiry”; and
- (b) for the words “such an inquiry” there shall be substituted the words “an inquiry”;
- and for the side-note to that section there shall accordingly be substituted “Inquiries.”.
- 198 In section 60(7)(b) of that Act as it applies to Scotland for the words “the Secretary of State” and “Secretary of State’s” there shall be substituted the words “SEPA” and “SEPA’s” respectively.
- 199 In section 63(1)(c) of that Act as it applies to Scotland for the words “sections 19(4) and” there shall be substituted the words “section”.

*The Radioactive Substances Act 1993*

- 200 Subject to the other provisions of this Act, in the <sup>M83</sup>Radioactive Substances Act 1993, for the words “chief inspector” or “chief inspector’s”, wherever occurring, there shall be substituted respectively the words “ appropriate Agency ” or “ appropriate Agency’s ”.

**Marginal Citations**

**M83** 1993 c. 12.

- 201 Sections 4 and 5 of that Act (appointment of inspectors and chief inspectors) shall cease to have effect.
- 202 (1) In section 7 of that Act (registration of users of radioactive material) in subsection (1) (c) (application to be accompanied by prescribed fee), for the words “prescribed fee” there shall be substituted the words “charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995”.
- (2) In subsection (7) of that section (chief inspector to have regard exclusively to amount and character of radioactive waste), for the word “him” there shall be substituted the word “it”.
- 203 In section 8 of that Act (exemptions from registration under section 7), in subsection (2) (power of chief inspector to impose conditions) for the word “he” there shall be substituted the word “it”.
- 204 (1) In section 10 of that Act (registration of mobile radioactive apparatus) in subsection (1)(c) (application to be accompanied by prescribed fee), for the words “prescribed fee” there shall be substituted the words “charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995”.
- (2) In each of subsections (3) and (5)(b) of that section (duty to supply copy of application, and to send copy of certificate, to local authority) for the word “him” there shall be substituted the words “the appropriate Agency”.

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- 205 (1) Section 16 of that Act (authorisations) shall be amended in accordance with the following provisions of this paragraph.
- (2) In subsection (2) (power to grant authorisations to be exercisable by the chief inspector) the words “Subject to subsection (3)” shall be omitted.
- (3) Subsection (3) (power to grant authorisations in England, Wales and Northern Ireland) shall be omitted.
- (4) In subsection (4) (application to be accompanied by prescribed fee), for the words “prescribed fee” there shall be substituted the words “charge prescribed for the purpose by a charging scheme under section 41 of the Environment Act 1995”.
- (5) After subsection (4) there shall be inserted—
- “(4A) Without prejudice to subsection (5), on any application for an authorisation under section 13(1) in respect of the disposal of radioactive waste on or from any premises situated on a nuclear site in any part of Great Britain, the appropriate Agency—
- (a) shall consult the relevant Minister and the Health and Safety Executive before deciding whether to grant an authorisation on that application and, if so, subject to what limitations or conditions, and
- (b) shall consult the relevant Minister concerning the terms of the authorisation, for which purpose that Agency shall, before granting any authorisation on that application, send that Minister a copy of any authorisation which it proposes so to grant.”
- (6) In subsection (5) (consultation by chief inspector and, where the premises are in England, Wales or Northern Ireland, the appropriate Minister with local authorities etc)—
- (a) for the words from “and, where” to “shall each” there shall be substituted the word “shall”; and
- (b) for the word “him”, in each place where it occurs, there shall be substituted the words “that Agency”.
- (7) In subsection (7) (applications, other than those to which subsection (3) applies, deemed to be refused if not determined within prescribed period) for the words “(other than an application to which subsection (3) applies)” there shall be substituted the words “(other than an application for an authorisation under section 13(1) in respect of the disposal of radioactive waste on or from any premises situated on a nuclear site in any part of Great Britain)”.
- (8) In subsection (8)(b) (conditions or limitations subject to which authorisations may be granted) for the words from “or, as” to “think” there shall be substituted the word “thinks”.
- (9) In subsection (10) of that section (fixing of date from which authorisation is to have effect)—
- (a) the words from “or, as” to “appropriate Minister” shall cease to have effect; and
- (b) for the words “him or them” and “his or their” there shall be substituted respectively the words “it” and “its”.
- (10) After that subsection there shall be inserted—

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“(11) In this section, “the relevant Minister” means—

- (a) in relation to premises in England, the Minister of Agriculture, Fisheries and Food, and
- (b) in relation to premises in Wales or Scotland, the Secretary of State.”

206 (1) In section 17 of that Act, after subsection (2) (variation of authorisations) there shall be inserted—

“(2A) On any proposal to vary an authorisation granted under section 13(1) in respect of the disposal of radioactive waste on or from any premises situated on a nuclear site in any part of Great Britain, the appropriate Agency—

- (a) shall consult the relevant Minister and the Health and Safety Executive before deciding whether to vary the authorisation and, if so, whether by attaching, revoking or varying any limitations or conditions or by attaching further limitations or conditions, and
- (b) shall consult the relevant Minister concerning the terms of any variation, for which purpose that Agency shall, before varying the authorisation, send that Minister a copy of any variations which it proposes to make.”

(2) Subsection (4) of that section (adaptations for authorisations granted by the chief inspector and the appropriate Minister) shall cease to have effect.

(3) At the end of that section there shall be added—

“(5) In this section, “the relevant Minister” has the same meaning as in section 16 above.”

207 (1) In section 18 of that Act (functions of public and local authorities in relation to authorisations under section 13) in subsection (1)—

- (a) the words from “(or, in a case” to “that Minister)”, and
- (b) the words “or the appropriate Minister, as the case may be,”,

shall cease to have effect.

(2) In subsection (2)(b) of that section (special precautions taken with the approval of the chief inspector etc) the words from “(or, where” to “that Minister)” shall cease to have effect.

208 In section 20 of that Act (retention and production of site or disposal records) subsection (3) (adaptation where powers exercisable by chief inspector and appropriate Minister) shall cease to have effect.

209 (1) In section 21 of that Act (enforcement notices) in subsection (1) (power of chief inspector to serve such a notice) for the word “he” there shall be substituted the word “it”.

(2) Subsection (3) of that section (adaptation in case of authorisations granted by the chief inspector and the appropriate Minister) shall cease to have effect.

(3) In subsection (4) of that section (copies of notices to be sent to certain public or local authorities) the words from “or, where” to “that Minister” shall cease to have effect.

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- 210 (1) In section 22 of that Act (prohibition notices) in subsection (1) (power of chief inspector to serve such a notice) for the word “he” there shall be substituted the word “it”.
- (2) Subsection (5) of that section (adaptation in case of authorisations granted by the chief inspector and the appropriate Minister) shall cease to have effect.
- (3) In subsection (6) of that section (copies of notices to be sent to certain public or local authorities) the words from “or, where” to “that Minister” shall cease to have effect.
- (4) In subsection (7) of that section (withdrawal of notices)—
- (a) the words from “or, where” to “that Minister” shall cease to have effect; and
  - (b) for the word “he”, in each place where it occurs, there shall be substituted the words “that Agency”.
- 211 (1) In section 23 of that Act (powers of Secretary of State to give directions to the chief inspector)—
- (a) in subsections (1) and (3) for the word “him” there shall be substituted the word “it”; and
  - (b) in subsection (2) for the word “his” there shall be substituted the word “its”.
- (2) After subsection (4) of that section there shall be inserted—
- “(4A) In the application of this section in relation to authorisations, and applications for authorisations, under section 13 in respect of premises situated on a nuclear site in England, references to the Secretary of State shall have effect as references to the Secretary of State and the Minister of Agriculture, Fisheries and Food.”
- 212 (1) In section 24 of that Act (power of Secretary of State to require certain applications to be determined by him) in subsections (1) and (4), for the word “him”, in each place where it occurs, there shall be substituted the word “it”.
- (2) After subsection (4) of that section there shall be inserted—
- “(4A) In the application of this section in relation to authorisations, and applications for authorisations, under section 13 in respect of premises situated on a nuclear site in England, references to the Secretary of State shall have effect as references to the Secretary of State and the Minister of Agriculture, Fisheries and Food.”
- 213 (1) In section 25 of that Act (power of Secretary of State to restrict knowledge of applications etc) in subsection (1) (applications under section 7 to 10 etc), after the words “knowledge of” there shall be inserted the words “such information as may be specified or described in the directions, being information contained in or relating to—”.
- (2) In subsection (2) of that section (applications under section 13 or 14 etc)—
- (a) the words from “or, in a case” to “Food,” and “or their” shall cease to have effect; and

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- (b) after the words “knowledge of” there shall be inserted the words “such information as may be specified or described in the directions, being information contained in or relating to—”.
- (3) In subsection (3) of that section (copies of certain applications etc which are the subject of a direction not to be sent to local or public authorities)—
  - (a) after the words “send a copy of” there shall be inserted the words “so much of”; and
  - (b) after the words “as the case may be” there shall be inserted the words “as contains the information specified or described in the directions—”.
- (4) After that subsection there shall be inserted—
 

“(3A) No direction under this section shall affect—

  - (a) any power or duty of the Agency to which it is given to consult the relevant Minister; or
  - (b) the information which is to be sent by that Agency to that Minister.”
- (5) At the end of that section there shall be added—
 

“(5) In this section “the relevant Minister” has the same meaning as in section 16 above.”

#### **Commencement Information**

**I30** Sch. 22 para. 213 wholly in force at 1.4.1996; Sch. 22 para. 213 not in force at Royal Assent see s. 125(3); Sch. 22 para. 213(1)(2)(b)(3) in force at 28.7.1995 by S.I. 1995/1983, art. 2; Sch. 22 para. 213(2)(a)(4) (5) in force at 1.4.1996 by S.I. 1996/186, art. 3

- 214 (1) Section 26 of that Act (appeals) shall be amended in accordance with the following provisions of this paragraph.
  - (2) Subsection (3)(a) (appeal not to lie in relation to authorisations subject to section 16(3)) shall cease to have effect.
  - (3) In subsection (4) (appeals in respect of enforcement or prohibition notices) the words “England, Wales or” shall be omitted.
  - (4) After subsection (5) there shall be inserted—
 

“(5A) In the application of this section in relation to authorisations, and applications for authorisations, under section 13 in respect of premises situated on a nuclear site in England, references in subsection (1) to (3) to the Secretary of State shall have effect as references to the Secretary of State and the Minister of Agriculture, Fisheries and Food.”
- 215 (1) Section 27 of that Act (procedure on appeals under section 26) shall be amended in accordance with the following provisions of this paragraph.
  - (2) In subsection (1) (power of Secretary of State to refer appeal to appointed person) after the word “26” there shall be inserted the words “, other than an appeal against any decision of, or notice served by, SEPA,”.
  - (3) After that subsection there shall be inserted—



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“(1A) As respects an appeal against any decision of, or notice served by, SEPA, this section is subject to section 114 of the Environment Act 1995 (delegation or reference of appeals).”

(4) After subsection (7) there shall be inserted—

“(7A) In the application of this section in relation to authorisations, and applications for authorisations, under section 13 in respect of premises situated on a nuclear site in England, references in subsections (1) to (6) to the Secretary of State shall have effect as references to the Secretary of State and the Minister of Agriculture, Fisheries and Food.”

216 Section 28 of that Act (representations in relation to authorisations and notices where appropriate Minister is concerned) shall cease to have effect.

217 (1) Section 30 of that Act (power of Secretary of State to dispose of radioactive waste) shall be amended in accordance with the following provisions of this paragraph.

(2) In subsection (1) (which confers the power)—

- (a) for the words “the Secretary of State”, in the first place where they occur, there shall be substituted the words “the appropriate Agency”;
- (b) for those words, wherever else occurring, there shall be substituted the words “that Agency”; and
- (c) for the word “his” there shall be substituted the word “its”.

(3) In subsection (3) (application of certain definitions of “owner”) for the words “Secretary of State” there shall be substituted the words “Environment Agency”.

(4) In subsection (4) (adaptations for Scotland) for the words “the Secretary of State” there shall be substituted the words “SEPA”.

218 Section 31 of that Act (rights of entry and inspection) shall cease to have effect.

219 In section 32 of that Act (offences relating to registration or authorisation, including the offence of failure to comply with the requirements of an enforcement or prohibition notice under section 21 or 22 of the Act) after subsection (2) there shall be added—

“(3) If the appropriate Agency is of the opinion that proceedings for an offence under subsection (1)(d) would afford an ineffectual remedy against a person who has failed to comply with the requirements of a notice served on him under section 21 or 22, that Agency may take proceedings in the High Court or, in Scotland, in any court of competent jurisdiction, for the purpose of securing compliance with the notice.”

220 In section 34(1) of that Act (which, with certain exceptions, makes it an offence to disclose certain trade secrets) after paragraph (b) (no offence where disclosure made in accordance with directions) there shall be inserted—

“(bb) under or by virtue of section 113 of the Environment Act 1995, or”.

221 Section 35 of that Act (obstruction of inspectors or other persons) shall cease to have effect.

222 In section 38 of that Act (restriction on prosecution) in subsection (1) (provision for England and Wales) for paragraph (b) there shall be substituted—

“(b) by the Environment Agency, or”.

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- 223 (1) In section 39 of that Act (public access to documents and records) in subsection (1) (duties of chief inspector)—
- (a) for the word “him”, in each place where it occurs, there shall be substituted the word “it”;
  - (b) for the word “he” there shall be substituted the words “the appropriate Agency”; and
  - (c) for the words “applications or certificates” there shall be substituted the word “information”.
- (2) In subsection (2), the words “or, as the case may be, the appropriate Minister and the chief inspector,” shall cease to have effect.

#### Commencement Information

**I31** Sch. 22 para. 223 wholly in force at 1.4.1996; Sch. 22 para. 223 not in force at Royal Assent see s. 125(3); Sch. 22 para. 223(1)(c) in force at 28.7.1995 by S.I. 1995/1983, art. 2; Sch. 22 para. 223(1)(a)(b)(2) in force at 1.4.1996 by S.I. 1996/186, art. 3

- 224 In section 40 of that Act (radioactivity to be disregarded for purposes of certain statutory provisions) in subsection (2)(b)(ii), after the words “imposed by the statutory provision on” there shall be inserted the words “the Environment Agency or SEPA or on”.
- 225 Section 42(5) of that Act (which precludes, in the interests of national security, the exercise of certain powers of entry in relation to Crown premises and which is superseded by provisions of this Act) shall cease to have effect.
- 226 Section 43 of that Act (which relates to fees and charges and which is superseded by provisions of this Act) shall cease to have effect.
- 227 (1) Subsection (1) of section 47 of that Act (general definitions) shall be amended in accordance with the following provisions of this paragraph.
- (2) There shall be inserted at the appropriate place—
- ““the appropriate Agency” means—
- (a) in relation to England and Wales, the Environment Agency; and
  - (b) in relation to Scotland, SEPA;”.
- (3) In the definition of “the appropriate Minister”, paragraphs (a) and (b) shall cease to have effect.
- (4) In the definition of “the chief inspector”, paragraphs (a) and (b) shall cease to have effect.
- (5) In the definition of “prescribed”, the words from “or, in relation to fees” onwards shall cease to have effect.
- (6) In the definition of “relevant water body”—
- (a) in paragraph (a), the words “the National Rivers Authority”, and
  - (b) in paragraph (b), the words “a river purification authority within the meaning of the <sup>M84</sup>Rivers (Prevention of Pollution) (Scotland) Act 1951”, shall be omitted.
- (7) There shall be inserted at the appropriate place—

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““SEPA” means the Scottish Environment Protection Agency;”.

**Marginal Citations**

**M84** 1951 c. 66.

- 228 In section 48 of that Act (index of defined expressions) in the Table—
- (a) the following entries shall be inserted at the appropriate place—
- |  |                |
|--|----------------|
| “the <sup>(i)</sup> appropriate Agency | section 47(1); |
| “SEPA <sup>(ii)</sup> ”                | section 47(1); |
- (b) the entry relating to the chief inspector shall be omitted.
- 229 Schedule 2 to that Act (exercise of rights of entry and inspection) shall cease to have effect.
- 230 (1) In Schedule 3 to that Act (enactments, other than local enactments, to which s.40 applies) in paragraph 9 (which specifies certain provisions in the <sup>M85</sup>Water Resources Act 1991) for the words “203 and 213” there shall be substituted the words “and 203”.
- (2) For paragraph 16 of that Schedule there shall be substituted—
- “16 Sections 30A, 30B, 30D, 30F, 30G, 30H(1), 31(4), (5), (8) and (9), 31A, 34 to 42B, 46 to 46D and 56(1) to (3) of the <sup>M86</sup>Control of Pollution Act 1974.”

**Marginal Citations**

**M85** 1991 c. 57.

**M86** 1974 c. 40.

*The Local Government (Wales) Act 1994*

- 231 In Schedule 9 to the Local Government (Wales) Act 1994 (which makes provision for the transfer to the new principal councils in Wales of functions in relation to public health and related matters), in paragraph 17(2) (which amends the definitions of waste regulation and disposal authorities for the <sup>M87</sup>purposes of Part II of the <sup>M88</sup>Environmental Protection Act 1990) for the words “each of subsections (1)(f) and (2)(f)” there shall be substituted the words “subsection (2)(f)”.

**Marginal Citations**

**M87** 1990 c. 43.

**M88** 1994 c. 19.

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*The <sup>M89</sup>Local Government etc. (Scotland) Act 1994*

**Marginal Citations**

**M89** 1994 c. 39.

- 232 (1) In section 2(2) of the Local Government etc. (Scotland) Act 1994 (constitution of councils) after the words “this Act” there shall be inserted the words “and of the Environment Act 1995”.
- (2) In Schedule 13 to that Act (minor and consequential amendments) in paragraph 75(27) (which amends certain provisions of the <sup>M90</sup>Sewerage (Scotland) Act 1968) for the words from the beginning to “premises)” there shall be substituted the words “In section 53 (notices to be in writing)”.

**Commencement Information**

**I32** Sch. 22 para. 232 partly in force; Sch. 22 para. 232 not in force at Royal Assent see s. 125(3); Sch. 22 para. 232(1) in force at 1.2.1996 by S.I. 1996/186, art. 2

**Marginal Citations**

**M90** 1968 c. 47.

*Subordinate legislation and local statutory provisions*

- 233 (1) In any subordinate legislation or local statutory provisions, for any reference (however framed) to the National Rivers Authority, and for any reference which falls to be construed as such a reference, there shall be substituted a reference to the Agency.
- (2) In any subordinate legislation, for any reference (however framed) to a relevant inspector, and for any reference which falls to be construed as such a reference, there shall be substituted a reference to the appropriate Agency.
- (3) The provisions of this paragraph are subject to the other provisions of this Act and to any provision made under or by virtue of this Act.
- (4) In this paragraph—
- “the appropriate Agency” means—
- (a) in relation to England and Wales, the Agency;
- (b) in relation to Scotland, SEPA;
- “local statutory provision” means—
- (a) a provision of a local Act (including an Act confirming a provisional order);
- (b) a provision of so much of any public general Act as has effect 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;
- (d) a provision of any other instrument which is in the nature of a local enactment;

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“relevant inspector” means—

- (i) the chief inspector for England and Wales constituted under section 16(3) of the Environmental Protection Act 1990;
- (ii) the chief inspector for Scotland constituted under section 16(3) of that Act;
- (iii) the chief inspector for England and Wales appointed under section 4(2)(a) of the <sup>M91</sup>Radioactive Substances Act 1993;
- (iv) the chief inspector for Scotland appointed under section 4(2)(b) of that Act;
- (v) the chief, or any other, inspector, within the meaning of the <sup>M92</sup>Alkali, &c, Works Regulation Act 1906;
- (vi) an inspector appointed under section 19 of the Health and Safety at Work etc. Act 1974 by the Secretary of State in his capacity as the enforcing authority responsible for the enforcement of the Alkali, <sup>M93</sup>&c, Works Regulation Act 1906 or section 5 of the <sup>M94</sup>said Act of 1974;

“subordinate legislation” has the same meaning as in the <sup>M95</sup>Interpretation Act 1978.

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**Marginal Citations**

**M91** 1993 c. 12.

**M92** 1906 c. 14.

**M93** 1906 c. 14.

**M94** 1974 c. 37.

**M95** 1978 c. 30.

**Status:**

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