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 STATUTORY INSTRUMENTS
 

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1978 No. 1210

## WATER, ENGLAND AND WALES

**The Water Authorities (Control of Discharges) Order 1978**

*Made* - - - - - 7th August 1978  
*Laid before Parliament* 21st August 1978  
*Coming into Operation* 15th September 1978

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The Secretary of State for the Environment and the Secretary of State for Wales, in exercise of the powers conferred on them by section 254(1) (a) and (2)(c) of the Local Government Act 1972(a) and section 34(1) of the Water Act 1973(b), and of all other powers enabling them in that behalf, hereby make the following order:—

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 (a) 1972 c.70.

(b) 1973 c.37.

## PART I

## PRELIMINARY

*Title, commencement and territorial extent of exercise of powers*

1.—(1) This order may be cited as the Water Authorities (Control of Discharges) Order 1978 and shall come into operation on 15th September 1978.

(2) This order is made by the Secretary of State for Wales in relation to the Welsh Water Authority and their area, and by the Secretary of State for the Environment in relation to any other water authority or area, and references in this order to the Secretary of State shall be construed accordingly.

*Interpretation*

2.—(1) The Interpretation Act 1889(a) shall apply for the interpretation of this order as it applies for the interpretation of an Act of Parliament.

(2) In this order, unless the context otherwise requires—

“controlled waters” has the same meaning as in section 1 of the Clean Rivers (Estuaries and Tidal Waters) Act 1960(b);

“inherited condition” has the meaning assigned to it by article 4(1), and “Part III inherited condition” has the meaning assigned to it by article 10(1);

“the 1951 Act” means the Rivers (Prevention of Pollution) Act 1951 (c);

“the 1961 Act” means the Rivers (Prevention of Pollution) Act 1961 (d);

“the 1963 Act” means the Water Resources Act 1963(e);

“sewage effluent” and “trade effluent” have the same meanings as in the 1951 Act;

“stream” has the same meaning as in the 1951 Act;

“underground strata” has the same meaning as in the 1963 Act.

(3) Any reference in this order to a numbered article shall be construed as a reference to the article bearing that number in this order.

## PART II

## DISCHARGES TO STREAMS AND CONTROLLED WATERS

*Cases to which article 4 applies*

3. Article 4 applies to any case where—

(a) a water authority, in the exercise of their functions, are making a discharge of trade effluent or sewage effluent to a stream or to controlled waters, and

(b) the discharge is subject to a condition which, immediately before 1st April 1974, had effect in relation to that discharge under a provision of the Rivers (Prevention of Pollution) Acts 1951 to 1961 (f), as originally enacted, or as applied, amended or extended by or under any other enactment.

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(a) 1889 c.63.    (b) 1960 c.54.    (c) 1951 c.64.    (d) 1961 c.50.

(e) 1963 c.38.    (f) 1951 c.64; 1960 c.54; 1961 c.50.

*Revocation and variation of inherited conditions*

4.—(1) In this article, in relation to any case to which this article applies, “the water authority” means the water authority concerned, and “inherited condition” means a condition which applies to a discharge made by the authority, being a condition of the kind mentioned in paragraph (b) of article 3.

(2) If, in a case to which this article applies, the water authority propose, whether in consequence of a review made under section 5 of the 1961 Act (review and variation of conditions) or otherwise, to revoke or vary an inherited condition, the following provisions of this article shall have effect for the purposes of the revocation or variation of that condition in place of the corresponding provisions of the said section 5.

(3) The water authority shall set out their proposals in the form of a draft notice revoking or varying the inherited condition, including, in the case of a proposed variation, all the matters which appear to them appropriate for inclusion in the variation they wish to secure, and shall send a copy thereof to the Secretary of State together with—

- (a) a copy of the inherited condition and, where appropriate, a copy of the consent or other authorisation in which, or in relation to which, the inherited condition is expressed or attached, and
- (b) a map showing and identifying the location of every discharge to which the proposals relate.

(4) At any time during the period of three months beginning with the date on which the water authority send any such proposals to the Secretary of State, or during such longer period beginning with that date as the Secretary of State and the water authority may within that period agree, the Secretary of State may give notice in writing to the authority—

- (a) informing them that he proposes to determine the matters to which the proposals relate,
- (b) requiring them to submit to him such information as he may specify in the notice concerning the proposals, and
- (c) inviting them to send to him any further information or representations that they may wish to submit.

(5) In this article, the expression “the relevant period”, in relation to any proposals sent to the Secretary of State in pursuance of paragraph (3) above, means—

- (a) in a case where a longer period than three months is agreed by the Secretary of State and the water authority for the purposes of paragraph (4) above, the period so agreed, and
- (b) in any other case, the period of three months mentioned in the said paragraph (4).

(6) The Secretary of State shall consider any information and representations submitted to him by the water authority under paragraph (4) above, and may give notice to the authority revoking the inherited condition or making such reasonable variation thereof as he thinks fit, and any condition so varied shall have effect accordingly.

(7) Where the relevant period relating to any proposals submitted by a water authority has elapsed and the Secretary of State has not given to the water authority any notice in writing in pursuance of paragraph (4) above, the draft notice in which the authority's proposals are set out shall take effect as a notice deemed to have been given by the Secretary of State under paragraph (6) above.

(8) The Secretary of State may at any time, after consultation with a water authority, give notice in writing to that authority revoking or varying any inherited condition relating to a discharge being made by them, whether or not the authority have submitted proposals to him under this part of this order in respect thereof, and any condition so varied shall have effect accordingly.

(9) Where a condition relating to a discharge of a water authority has been varied by virtue of this part of this order, it shall not on that account cease to be treated as an inherited condition, and accordingly it may subsequently be revoked or further varied under this part of this order.

(10) Subject to paragraph (9) above, any condition which has effect by virtue of this part of this order shall have effect for the purposes of the Rivers (Prevention of Pollution) Acts 1951 to 1961 as if it were a condition imposed under section 5(1) of the 1961 Act.

(11) In this article, references to varying a condition include references to substituting for any condition or conditions one or more other conditions, and to imposing any new conditions.

#### *Register of conditions*

5.—(1) In subsection (7) of section 7 of the 1951 Act any references to conditions imposed under that section shall be treated as including a reference to conditions which have been imposed by virtue of this part of this order.

(2) Where a water authority enter in the register maintained by them under the said subsection (7) particulars of any conditions imposed in consequence of a notice deemed to have been given to them in accordance with paragraph (7) of article 4, they shall notify the date of entry of those particulars to the Secretary of State within 14 days after they have so entered them.

### PART III

#### DISCHARGES INTO UNDERGROUND STRATA

##### *Consent of Secretary of State*

6. In relation to discharges made by a water authority, the restrictions imposed by the provisions of subsections (1), (8) and (9) of section 72 of the 1963 Act on the discharge into any underground strata of any trade effluent or sewage effluent, or of any poisonous, noxious or polluting matter which is not trade effluent or sewage effluent, shall have effect as if any reference in those provisions which is, or which falls to be construed as, a reference to—

- (a) a consent granted by a water authority, or
- (b) a condition relating to such a consent

were a reference to—

- (i) a consent granted or deemed to be granted by the Secretary of State in accordance with this part of this order, or, as the case may be,
- (ii) a condition relating to such a consent.

*Applications for consent*

7.—(1) Where a water authority propose to make a discharge in relation to which consent is required under section 72 of the 1963 Act, they shall set out their proposals in the form of a draft consent, including all the matters which appear to them to be appropriate for inclusion in the consent they require, and shall send a copy thereof to the Secretary of State together with a map showing and identifying the location of every discharge in relation to which consent is required.

(2) At any time during the period of three months beginning with the date on which the water authority send any such proposals to the Secretary of State, or during such longer period beginning with that date as the Secretary of State and the water authority may within that period agree, the Secretary of State may by notice in writing require the authority to apply to him for a consent authorising those proposals, and thereafter—

- (a) any application to the Secretary of State in pursuance of such a requirement shall be made by reference to the draft consent setting out the relevant proposals, and
- (b) the Secretary of State, on receiving any such application, may grant consent either unconditionally or subject to such conditions as appear to him to be reasonable.

(3) In this article, the expression “the relevant period”, in relation to any application sent to the Secretary of State in pursuance of paragraph (1) above, means—

- (a) in a case where a longer period than three months is agreed by the Secretary of State and the water authority for the purposes of paragraph (2) above, the period so agreed, and
- (b) in any other case, the period of three months mentioned in the said paragraph (2).

(4) Where the relevant period relating to any proposals submitted by a water authority has elapsed and the Secretary of State has not by notice in writing required the water authority to apply to him for a consent, the draft consent in which the authority's proposals are set out shall take effect as a consent deemed to have been granted by the Secretary of State.

*Variation of conditions*

8.—(1) Where a consent has been granted or deemed to be granted to a water authority in accordance with article 7, the Secretary of State may, after consultation with that authority, give to that authority a notice making any reasonable variation of, or revoking, any condition imposed on that consent, and any condition so varied shall thereafter have effect accordingly.

(2) In this article references to varying a condition include references to substituting for any condition any one or more other conditions, and to imposing any new conditions.

*Cases to which article 10 applies***9.** Article 10 applies to any case where—

- (a) a water authority, in the exercise of their functions, are making a discharge into underground strata, being a discharge of matter of a kind mentioned in paragraph (a) or (b) of subsection (1) of section 72 of the 1963 Act (which relates to the control of discharges into underground strata), and
- (b) the discharge is subject to a condition which, immediately before 1st April 1974, had effect in relation to that discharge under the said section 72.

*Revocation and variation of Part III inherited conditions*

**10.**—(1) In this article, in relation to any case to which this article applies, “the water authority” means the water authority concerned, and “Part III inherited condition” means a condition which applies to a discharge made by the authority, being a condition of the kind mentioned in paragraph (b) of article 9.

(2) If, in a case to which this article applies, the water authority propose to revoke or vary a Part III inherited condition, the following provisions of this article shall have effect for the purposes of the revocation or variation of that condition in place of the corresponding provisions of section 74 of the 1963 Act (which relates to the revocation or variation of consent under section 72).

(3) The water authority shall set out their proposals in the form of a draft notice revoking or varying the Part III inherited condition, including, in the case of a proposed variation, all the matters which appear to them appropriate for inclusion in the variation they wish to secure, and shall send a copy thereof to the Secretary of State together with—

- (a) a copy of the Part III inherited condition and, where appropriate, a copy of the consent or other authorisation in which, or in relation to which, the Part III inherited condition is expressed or attached, and
- (b) a map showing and identifying the location of every discharge to which the proposals relate.

(4) At any time during the period of three months beginning with the date on which the water authority send any such proposals to the Secretary of State, or during such longer period beginning with that date as the Secretary of State and the water authority may within that period agree, the Secretary of State may give notice to the authority—

- (a) informing them that he proposes to determine the matters to which the proposals relate,
- (b) requiring them to submit to him such information as he may specify in the notice concerning the proposals, and
- (c) inviting them to send to him any further information or representations that they may wish to submit.

(5) In this article, the expression “the relevant period”, in relation to any proposals sent to the Secretary of State in pursuance of paragraph (3) above, means—

- (a) in a case where a longer period than three months is agreed by the Secretary of State and the water authority for the purposes of paragraph (4) above, the period so agreed, and

(b) in any other case, the period of three months mentioned in the said paragraph (4).

(6) The Secretary of State shall consider any information and representations submitted to him by the water authority under paragraph (4) above, and may give notice to the authority revoking the Part III inherited condition or making such reasonable variation thereof as he thinks fit, and any condition so varied shall have effect accordingly.

(7) Where the relevant period relating to any proposals submitted by a water authority has elapsed and the Secretary of State has not given to the water authority any notice in writing in pursuance of paragraph (4) above, the draft notice in which the authority's proposals are set out shall take effect as a notice deemed to have been given by the Secretary of State under paragraph (6) above.

(8) The Secretary of State may at any time, after consultation with a water authority, give notice in writing to that authority revoking or varying any Part III inherited condition relating to a discharge being made by them, whether or not the authority have submitted proposals to him under this part of this order in respect thereof, and any condition so varied shall have effect accordingly.

(9) Where a condition relating to a discharge of a water authority has been varied by virtue of this part of this order, it shall not on that account cease to be treated as a Part III inherited condition, and accordingly it may subsequently be revoked or further varied under this part of this order.

(10) Subject to paragraph (9) above, any condition which has effect by virtue of this part of this order shall have effect for the purposes of the 1963 Act as if it were a condition imposed under section 72 of that Act.

(11) In this article, references to varying a condition include references to substituting for any condition or conditions one or more other conditions, and to imposing any new conditions.

*Register of consents*

11.—(1) In subsection (1) of section 75 (registers of consents) of the 1963 Act any reference to consents granted under section 72 of that Act shall be treated as including a reference to consents granted, or deemed to be granted, under this part of this order.

(2) Where a water authority enter in the register kept by them under the said subsection (1) particulars of any conditions imposed in consequence of a consent or notice deemed to have been given to them in accordance with paragraph (4) of article 7 or paragraph (7) of article 10, they shall notify the date of entry of those particulars to the Secretary of State within 14 days after they have so entered them.

3rd August 1978.

*Peter Shore,*  
Secretary of State for the Environment.

Signed by authority of the  
Secretary of State for Wales.

7th August 1978.

*T. Alec Jones,*  
Parliamentary Under Secretary of State

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

The Water Act 1973 provided for the establishment of ten water authorities for England and Wales, and transferred to them a number of functions previously exercised by river authorities or sewerage authorities. These functions included the granting of consent, subject to conditions, for the making of discharges of trade effluent or sewage effluent to streams or to controlled waters (under the Rivers (Prevention of Pollution) Acts 1951 to 1961) or to underground strata (under the Water Resources Act 1963), and the provision of sewerage and sewage disposal services (under the Public Health Act 1936 (c. 49)).

This Order lays down procedures for the granting of consent, and the imposition, variation and revocation of conditions, in certain cases where discharges of trade or sewage effluent are made, or proposed to be made, by water authorities to streams, controlled waters or underground strata.

Part II provides for the variation and revocation by, or with the consent of, the Secretary of State of "inherited conditions" relating to discharges of trade or sewage effluent by water authorities to streams or controlled waters, that is to say existing conditions which had originally been attached to consents granted by river authorities to sewerage authorities before the relevant functions of both such authorities were transferred to water authorities. (Provision for the granting of consent, subject to conditions, for new discharges to be made by water authorities to streams or controlled waters is contained in the Water Authorities (Control of Outlets and Discharges) Regulations 1975 (S.I. 1975 450).)

Part III makes similar provision for the variation and revocation of similar conditions (called for purposes of distinction "Part III inherited conditions") relating to discharges of trade or sewage effluent by water authorities to underground strata, and that part also provides for the granting of consent, subject to conditions, for new discharges to be made by water authorities to underground strata.

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