

SCHEDULE 2

TRANSITIONAL, TRANSITORY AND SAVING PROVISIONS

PART III

TRADE EFFLUENT

Existing discharges

13.—(1) No discharge of trade effluent from any trade premises into a sewer or waste water treatment works of the sewerage undertaker shall on or after the transfer date be authorised by virtue of Article 29 of the 1973 Order.

(2) Subject to the following provisions of this paragraph

(a) where any discharge of trade effluent from any trade premises into a sewer was authorised by Article 29 of the 1973 Order immediately before the transfer date, a consent shall be deemed to be given under Chapter III of Part VI of the 2006 Order by the sewerage undertaker on the transfer date (referred to in this Part as a “deemed consent”) for the discharge from those premises into that sewer to continue on and after the transfer date, and—

(b) a deemed consent—

(i) shall, subject to paragraph 19, be subject to the same conditions as to charges or otherwise as the discharge to which it relates was subject immediately before the transfer date;

(ii) shall be deemed to include the consent of DOE in relation to any part of the discharge that comprises special category effluent; and

(iii) shall have effect as if it had been granted under that Chapter to the occupier on the transfer date of those premises.

(3) Except where the discharge to which a deemed consent relates is immediately before the transfer date subject to a direction under Article 31 of the 1973 Order (whether or not that direction has taken effect)

(a) the sewerage undertaker may at any time after the transfer date give a direction under Article 182 of the 2006 Order varying the conditions attached to the consent, including any attached by virtue of sub-paragraph (2), as if Article 182(2) did not apply; and

(b) Articles 182(6)(a), 183 and 184 of the 2006 Order shall not apply in relation to any such direction.

(4) A deemed consent—

(a) shall not be transferable, and Article 177 of the 2006 Order shall accordingly not apply in relation to it; and

(b) shall cease to have effect on the expiry of the period of six months commencing on the transfer date, except as provided in sub-paragraph (5).

(5) Where, before the expiry of the period referred to in sub-paragraph (4), the occupier of trade premises has made an application to the sewerage undertaker under Article 176 of the 2006 Order for a consent to discharge trade effluent, being a discharge to which a deemed consent relates, the deemed consent shall cease to have effect-

(a) if the consent is given (whether following a reference to DOE under Article 178 of the 2006 Order in relation to the consent or otherwise), on the date on which it is given (whether

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- or not it is subject to conditions that may be the subject of an appeal under Article 180(1)(c) of the 2006 Order);
- (b) if the consent is refused (whether following a reference to DOE under Article 178 of the 2006 Order in relation to the consent or otherwise)—
- (i) except where (ii) applies, on the expiry of the period of 28 days beginning with the date on which the undertaker refused it; or
 - (ii) where the occupier appeals to the Authority under Article 180(1)(a) of the 2006 Order within such 28 day period, on the date on which the Authority determines the appeal;
- (c) if the occupier appeals to the Authority under Article 180(1)(b) of the 2006 Order in respect of the failure to give the consent, on the date on which the Authority determines the appeal.
- (6) Any dispute between the sewerage undertaker and a person making a discharge as to whether the discharge is one which was authorised by Article 29 of the 1973 Order immediately before the transfer date shall be determined by the county court whose decision in the matter shall be final, except on a point of law.
- (7) Where the discharge to which a deemed consent relates is immediately before the transfer date subject to a direction under Article 31 of the 1973 Order (in this paragraph referred to as a “reviewed discharge”)—
- (a) the reference in Article 182(2) of the 2006 Order to the date of the consent shall be taken as a reference to the date on which that direction (or, if there is more than one such direction, the most recent of them) took effect; and
 - (b) the reference in Article 185(2) of the 2006 Order to a review shall be taken not to include any review conducted before the transfer date by the Department (or any predecessors).
- (8) Where any appeal has been made to the Appeals Commission in accordance with Article 31(5) of the 1973 Order and has not been determined before the transfer date, it shall be determined by the Authority on or after that date in accordance with sub-paragraph (9).
- (9) Any appeal to the Authority under sub-paragraph (8) shall be determined by the Authority under Article 180 of the 2006 Order as if—
- (a) the appeal were made under sub-paragraph (c) of paragraph (1) of that Article against any condition attached by the sewerage undertaker on an application for a consent; and
 - (b) in the application of Article 181 of the 2006 Order to that appeal—
 - (i) paragraph (1) of that Article were omitted; and
 - (ii) sub-paragraph (a) of paragraph (2) of that Article were taken to include a case in which the sewerage undertaker in question would have been required to make a reference under Article 178 of the 2006 Order had the discharge in question been the subject of a notice under Article 176 of that Order.
- (10) References in this paragraph to a direction under Article 31 of the 1973 Order include references to a reviewed direction under that Article.