

## SCHEDULE 21

Regulation 35(2)(o)

### Water discharge activities

#### Application

1. This Schedule applies in relation to every water discharge activity.

#### Interpretation

2. In this Schedule—
  - “discharging sewer” means the sewer or works from which sewage effluent is discharged;
  - “discharging undertaker” means the sewerage undertaker in which a discharging sewer is vested;
  - “main connection” has the same meaning as in section 110A of the Water Industry Act 1991(1);
  - “pipe” has the same meaning as in the 1991 Act;
  - “sending undertaker” means a sewerage undertaker which discharges sewage effluent into the discharging sewer or other sewer or works vested in the discharging undertaker; and
  - “waste” in the term “waste matter” includes—
    - (a) anything that is waste for the purposes of the Waste Framework Directive and is not excluded from the scope of that Directive by Article 2(1) of that Directive,
    - (b) anything that is waste for the purposes of the Mining Waste Directive and is not excluded from the scope of that Directive by Article 2(2) of that Directive.

#### Meaning of “water discharge activity”

- 3.—(1) A “water discharge activity” means any of the following—
  - (a) the discharge or entry to inland freshwaters, coastal waters or relevant territorial waters of any—
    - (i) poisonous, noxious or polluting matter,
    - (ii) waste matter, or
    - (iii) trade effluent or sewage effluent;
  - (b) the discharge from land through a pipe into the sea outside the seaward limits of relevant territorial waters of any trade effluent or sewage effluent;
  - (c) the removal from any part of the bottom, channel or bed of any inland freshwaters of a deposit accumulated by reason of any dam, weir or sluice holding back the waters, by causing it to be carried away in suspension in the waters, unless the activity is carried on in the exercise of a power conferred by or under any enactment relating to land drainage, flood prevention or navigation;
  - (d) the cutting or uprooting of a substantial amount of vegetation in any inland freshwaters or so near to any such waters that it falls into them and failure to take reasonable steps to remove the vegetation from these waters;
  - (e) an activity in respect of which a notice under paragraph 4 or 5 has been served and has taken effect.
- (2) A discharge or an activity that might lead to a discharge is not a “water discharge activity”—

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(1) Section 110A was inserted by the Competition and Service (Utilities) Act 1992 (c. 43), section 45 and amended by the Water Act 2003 (c. 37), section 36(2) and the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraph 104.

- (a) if the discharge is made, or authorised to be made, by or under any prescribed statutory provision; or
- (b) if the discharge is of trade effluent or sewage effluent from a vessel.

(3) In determining whether a discharge or an activity is a water discharge activity, no account must be taken of any radioactivity possessed by any substance or article or by any part of any premises.

#### **Highway drains – notice requiring environmental permit**

4.—(1) This paragraph applies where—

- (a) a person is operating a highway drain; and
- (b) that activity might lead to a discharge mentioned in paragraph 3(1)(a) or (b).

(2) The regulator may serve a notice on the person operating the highway drain requiring the person, from the date the notice takes effect, to hold an environmental permit authorising the carrying on of that activity.

(3) A notice under this paragraph takes effect on the date specified in it, which must be at least 6 months after it is served.

#### **Discharge of trade effluent or sewage effluent into lake or pond – notice requiring environmental permit**

5.—(1) The regulator may serve a notice on a person who discharges trade effluent or sewage effluent into the waters of any lake or pond which are not inland freshwaters requiring the person, from the date the notice takes effect, to hold an environmental permit authorising the carrying on of that activity.

(2) A notice under this paragraph takes effect on the date specified in it, which must be at least 3 months after it is served.

#### **Liability resulting from discharge of sewage effluent from public sewer**

6.—(1) This paragraph applies for the purpose of determining liability for a water discharge activity that consists of a discharge of sewage effluent from a discharging sewer vested in a discharging undertaker.

(2) A discharging undertaker causes a discharge of sewage effluent if—

- (a) matter included in the discharge is received by the discharging undertaker into the discharging sewer or into any other sewer or works vested in it;
- (b) the discharging undertaker was bound (either unconditionally or subject to conditions which were observed) to receive the matter into the discharging sewer or other sewer or works; and
- (c) sub-paragraph (3) does not apply.

(3) This sub-paragraph applies if, before the discharging undertaker discharges the sewage effluent from the discharging sewer, the sending undertaker, under an agreement with the discharging undertaker under section 110A of the Water Industry Act 1991, discharges the sewage effluent through a main connection into—

- (a) the discharging sewer; or
- (b) any other sewer or works vested in the discharging undertaker.

(4) If sub-paragraph (3) applies, the sending undertaker causes the discharge if—

- (a) matter included in the discharge is received by the sending undertaker into a sewer or works vested in it; and

- (b) it was bound (either conditionally or subject to conditions which were observed) to receive that matter into that sewer or works.
- (5) A sewerage undertaker is not guilty of an offence under regulation 38(1) in relation to a water discharge activity that consists of a discharge of sewage effluent from a sewer or works vested in it if—
- (a) the contravention is attributable to a discharge which another person caused or knowingly permitted to be made into the sewer or works;
  - (b) the undertaker either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions which were not observed; and
  - (c) the undertaker could not reasonably have been expected to prevent the discharge into the sewer or works.
- (6) A person is not guilty of an offence under regulation 38(1) in relation to a discharge which the person caused or knowingly permitted to be made into a sewer or works vested in a sewerage undertaker if that undertaker was bound to receive the discharge, either unconditionally or subject to conditions which were observed.