

SCHEDULES

SCHEDULE 23

Section 168.

CONTROL OF WATER POLLUTION IN SCOTLAND

1 The <sup>M1</sup>Control of Pollution Act 1974 as it applies to Scotland is amended in accordance with the provisions of this Schedule.

Marginal Citations

M1 1974 c. 40.

2 [<sup>F1</sup>In subsection (4) of section 4 (meaning of “land”), for the words “in a stream” there shall be substituted the words “in inland waters”.]

Textual Amendments

F1 Sch. 23 para. 2 repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), sch. 3 para. 21; S.S.I. 2014/160, art. 2(1)(2), sch.

3 [<sup>F2</sup>In subsection (9) of section 11, for the words “relevant waters” there shall be substituted the words “controlled waters”.]

Textual Amendments

F2 Sch. 23 para. 3 repealed (S.) (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), s. 61(2), sch. 3 para. 21; S.S.I. 2014/160, art. 2(1)(2), sch.

4 For sections 31 to 42 there shall be substituted the following sections—

“ General provisions

30A Waters to which Part II applies.

- (1) This part applies to any waters (in this Part referred to as “controlled waters”) of any of the following classes—
- (a) relevant territorial waters, that is to say, subject to subsection (5) below, the waters which extend seaward for three miles from the baselines from which the breadth of the territorial sea adjacent to Scotland is measured;

(b) coastal waters, that is to say, any waters which are within the area which extends landward from those baselines as far as the limit of the highest tide or, in the case of the waters of any relevant river or watercourse, as far as the fresh-water limit of the river or

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watercourse, together with the waters of any enclosed dock which adjoins waters within that area;

- (c) inland waters, that is to say, the waters of any relevant loch or pond or of so much of any relevant river or watercourse as is above the fresh-water limit;
- (d) ground waters, that is to say, any waters contained in underground strata, or in—
  - (i) a well, borehole or similar work sunk into underground strata, including any adit or passage constructed in connection with the well, borehole or work for facilitating the collection of water in the well, borehole or work; or
  - (ii) any excavation into underground strata where the level of water in the excavation depends wholly or mainly on water entering it from the strata.

(2) The Secretary of State—

- (a) shall deposit maps with each river purification authority showing what appear to him to be the fresh-water limits of every relevant river or watercourse in the area of that authority; and
- (b) may from time to time, if he considers it appropriate to do so by reason of any change of what appears to him to be the fresh-water limit of any river or watercourse, deposit a map showing a revised limit for that river or watercourse;

and in subsection (1) above “fresh-water limit”, in relation to any river or watercourse, means the place for the time being shown as the fresh-water limit of that river or watercourse in the latest map deposited for that river or watercourse under this subsection.

- (3) It shall be the duty of each river purification authority to keep any maps deposited with it under subsection (2) above available, at all reasonable times, for inspection by the public free of charge.

(4) In this section—

“miles” means international nautical miles of 1,852 metres;

“loch or pond” includes a reservoir of any description;

“relevant loch or pond” means (subject to subsection (5) below) any loch or pond which (whether it is natural or artificial or above or below ground) discharges into a relevant river or watercourse or into another loch or pond which is itself a relevant loch or pond;

“relevant river or watercourse” means any river or watercourse (including an underground river or watercourse and an artificial river or watercourse) which is neither a public sewer nor a sewer or drain which drains into a public sewer.

(5) The Secretary of State may by order provide—

- (a) that any area of the territorial sea adjacent to Scotland is to be treated as if it were an area of relevant territorial waters for the purposes of this Part;
- (b) that any loch or pond which does not discharge into a relevant river or watercourse or into a relevant loch or pond is to be treated for those purposes as a relevant loch or pond.

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- (6) The power of the Secretary of State to make an order under subsection (5) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament; and such an order may—
- (a) contain such supplemental, consequential and transitional provision as the Secretary of State considers appropriate; and
  - (b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities.

### **30B Classification of quality of waters.**

- (1) The Secretary of State may, in relation to any description of controlled waters (being a description applying to some or all of the waters of a particular class or of two or more different classes), by regulations prescribe a system of classifying the quality of those waters according to criteria specified in the regulations.
- (2) The criteria specified in regulations under this section in relation to any classification shall consist of one or more of the following, that is to say—
- (a) general requirements as to the purposes for which the waters to which the classification is applied are to be suitable;
  - (b) specific requirements as to the substances that are to be present in or absent from the water and as to the concentrations of substances which are or are required to be present in the water;
  - (c) specific requirements as to other characteristics of those waters;
- and, for the purposes of any such classification, regulations under this section may provide that the question whether prescribed requirements are satisfied may be determined by reference to such samples as may be prescribed.

### **30C Water quality objectives.**

- (1) For the purpose of maintaining and improving the quality of controlled waters the Secretary of State may, by serving a notice on a river purification authority specifying—
- (a) one or more of the classifications for the time being prescribed under section 30B above; and
  - (b) in relation to each specified classification, a date,
- establish the water quality objectives for any waters within the area of that authority which are, or are included in, waters of a description prescribed for the purposes of that section.
- (2) The water quality objectives for any waters to which a notice under this section relates shall be the satisfaction by those waters, on and at all times after each date specified in the notice, of the requirements which at the time of the notice were the requirements for the classification in relation to which that date is so specified.
- (3) Where the Secretary of State has established water quality objectives under this section for any waters he may review objectives for those waters if—

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- (a) five years or more have elapsed since the service of the last notice under subsection (1) or (6) of this section to be served in respect of those waters; or
  - (b) the river purification authority on which that notice has been served, after consultation with such persons as it considers appropriate, requests a review;
- and the Secretary of State shall not exercise his power to establish objectives for any waters by varying the existing objectives for those waters except in consequence of such a review.
- (4) Where the Secretary of State proposes to exercise his power under this section to establish or vary the objectives for any waters in the area of a river purification authority he shall—
- (a) give notice to that authority setting out his proposal and specifying the period (not being less than three months from the date of publication of the notice) within which representations with respect to the proposal may be made; and
  - (b) consider any representations which are duly made;
- and if he decides, after considering any such representations, to exercise his power to establish or vary those objectives, he may do so either in accordance with the proposal contained in the notice or in accordance with that proposal as modified in such manner as he considers appropriate.
- (5) A notice under subsection (4) above shall be given—
- (a) by publishing the notice in such manner as the Secretary of State considers appropriate for bringing it to the attention of persons likely to be affected by it; and
  - (b) by serving a copy of the notice on the authority.
- (6) If, on a review under this section or in consequence of any representations made following such a review for the purposes of subsection (4) above, the Secretary of State decides that the water quality objectives for any waters in the area of a river purification authority should remain unchanged, he shall serve notice of that decision on that authority.

### **30D General duties to achieve and maintain objectives etc.**

- (1) It shall be the duty of the Secretary of State and of each river purification authority to exercise the powers conferred on him or it by or under the following provisions of this Part or the provisions of the Rivers (Prevention of Pollution) (Scotland) Acts 1951 and 1965 in such manner as ensures, so far as it is practicable by the exercise of those powers to do so, that the water quality objectives specified for any waters in a notice under section 30C above, or in a notice under section 105 of the Water Act 1989, are achieved at all times.
- (2) It shall be the duty of each river purification authority, for the purposes of the carrying out of its functions under the following provisions of this Part or the provisions of the Rivers (Prevention of Pollution) (Scotland) Acts 1951 and 1965, to monitor the extent of pollution in controlled waters.

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### **30E Consultation and collaboration.**

In the performance of their functions in relation to waters partly in Scotland and partly in England river purification authorities shall, in matters of common interest, consult and collaborate with the National Rivers Authority.

*Control of entry of polluting matter and effluents into water*

### **31 Control of pollution of rivers and coastal waters etc.**

- (1) Subject to subsections (2) and (3) of this section, a person shall be guilty of an offence if he causes or knowingly permits—
  - (a) any poisonous, noxious or polluting matter to enter controlled waters; or
  - (b) any matter to enter any inland waters so as to tend (either directly or in combination with other matter which he or another person causes or permits to enter those waters) to impede the proper flow of the waters in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of the consequences of such pollution; or
  - (c) any solid waste matter to enter controlled waters.
- (2) A person shall not be guilty of an offence by virtue of the preceding subsection if—
  - (a) the entry in question is authorised by, or is a consequence of an act authorised by, a disposal licence or a consent given by the Secretary of State or a river purification authority in pursuance of this Act and the entry or act is in accordance with the conditions, if any, to which the licence or consent is subject; or
  - (b) the entry in question is authorised by, or is a consequence of an act authorised by—
    - (i) section 33 of the Water (Scotland) Act 1980 (which among other things relates to temporary discharges by water authorities in connection with the construction of works) or any prescribed enactment, or
    - (ii) any provision of a local Act or statutory order which expressly confers power to discharge effluent into water, or
    - (iii) any licence granted under Part II of the Food and Environment Protection Act 1985; or
    - (iv) any consent given under Chapter I of Part III of the Water Act 1989; or
  - (c) the entry in question is caused or permitted in an emergency in order to avoid danger to life or health and—
    - (i) he takes all such steps as are reasonably practicable in the circumstances for minimising the extent of the entry in question and of its polluting effects; and
    - (ii) as soon as reasonably practicable after the entry occurs, particulars of the entry are furnished to the river purification authority in whose area it occurs; or

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- (d) the matter in question is trade or sewage effluent discharged as mentioned in paragraph (a) of subsection (1) of section 32 or matter discharged as mentioned in paragraph (b) or (c) of that subsection and the entry in question is not from a vessel;
- and a person shall not be guilty of an offence by virtue of the preceding subsection by reason only of his permitting water from an abandoned mine to enter controlled waters.
- (3) A person shall not by virtue of paragraph (b) or (c) of subsection (1) of this section be guilty of an offence by reason of his depositing the solid refuse of a mine or quarry on any land so that it falls or is carried into inland waters if—
    - (a) he deposits the refuse on the land with the consent (which shall not be unreasonably withheld) of the river purification authority in whose area the land is situated; and
    - (b) no other site for the deposit is reasonably practicable; and
    - (c) he takes all reasonably practicable steps to prevent the refuse from entering those inland waters.
  - (4) Where it appears to the Secretary of State that, with a view to preventing poisonous, noxious or polluting matter from entering any controlled waters, it is appropriate to prohibit or restrict the carrying on in a particular area of activities which he considers are likely to result in pollution of the waters, then, subject to subsection (5) below, he may by regulations—
    - (a) designate that area; and
    - (b) provide that prescribed activities shall not be carried on at any place within the area except with the consent (which shall not be unreasonably withheld) of the river purification authority in whose area the place is situated and in accordance with any reasonable conditions to which the consent is subject;
    - (c) provide that a contravention of the regulations shall be an offence and prescribe the maximum penalty for the offence; and
    - (d) make provision for the imposition by river purification authorities of charges in respect of the consent mentioned in paragraph (b) above.
  - (5) It shall be the duty of the Secretary of State, before he makes any regulations under subsection (4) above—
    - (a) to publish in the Edinburgh Gazette and in at least one newspaper circulating in the area in question a copy of the proposed regulations and a notice specifying—
      - (i) a period of not less than twenty-eight days, beginning with the date on which the notice is first published, within which objections to the proposed regulations may be made, and
      - (ii) the person to whom such objections may be made; and
    - (b) to consider any objections to the proposed regulations which are made within that period and, if such an objection is so made by a prescribed person and is not withdrawn, to cause a local inquiry to be held in pursuance of section 96 of this Act with respect to the proposed regulations;

and the Secretary of State may, after considering any such objections as are mentioned in paragraph (b) of this subsection and the report of any person appointed to hold a local inquiry with respect to the proposed

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regulations, make the regulations either in the form in which a copy of them was published in pursuance of this subsection or in that form with such modifications as he considers appropriate.

- (6) A river purification authority may by byelaws make such provision as the authority considers appropriate for prohibiting or regulating the washing or cleaning, in any controlled waters in its area, of things of a kind specified in the byelaws; and a person who contravenes any byelaws made by virtue of this subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale or such smaller sum as is specified in the byelaws.
- (7) A person guilty of an offence by virtue of subsection (1) of this section shall be liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.
- (8) The maximum penalty prescribed in pursuance of subsection (4) of this section shall not exceed the penalties specified in paragraphs (a) and (b) of the preceding subsection.
- (9) In subsection (4) of this section, the reference to the entry of poisonous, noxious or polluting matter into controlled waters shall not include a reference to the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use of any land for agricultural purposes.
- (10) In subsection (2) of this section—
  - “disposal licence” has the same meaning as in Part I of this Act;
  - “local Act” includes enactments in a public general Act which amend a local Act;
  - “statutory order” means an order, byelaw, scheme or award made under an Act of Parliament, including an order or scheme confirmed by Parliament or brought into operation in accordance with special parliamentary procedure.

### **31A Requirements to take precautions against pollution.**

- (1) The Secretary of State may by regulations make provision—
  - (a) for prohibiting a person from having custody or control of any poisonous, noxious or polluting matter unless prescribed works and prescribed precautions and other steps have been carried out or taken for the purpose of preventing the matter from entering controlled waters;
  - (b) for requiring a person who already has custody or control of, or makes use of, any such matter to carry out such works for that purpose and to take such precautions and other steps for that purpose as may be prescribed.
- (2) Without prejudice to the generality of the power conferred by subsection (1) above, regulations under that subsection may—

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- (a) confer power on the river purification authorities—
  - (i) to determine for the purposes of the regulations the circumstances in which a person is required to carry out works or take any precautions or other steps; and
  - (ii) by notice to that person, to impose the requirement and to specify or describe the works, precautions or other steps which that person is required to carry out or take;
- (b) provide for appeals to the Secretary of State against notices served by a river purification authority in pursuance of provision made by virtue of paragraph (a) above; and
- (c) provide that a contravention of the regulations shall be an offence the penalty for which shall be—
  - (i) on summary conviction, imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or to both;
  - (ii) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or both.

### **31B Nitrate sensitive areas.**

- (1) Where the Secretary of State considers that it is appropriate to do so with a view to achieving the following purpose, that is to say, preventing or controlling the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use of any land for agricultural purposes, he may by order designate that land, together with any other land to which he considers it appropriate to apply the designation, as a nitrate sensitive area.
- (2) Where any area has been designated as a nitrate sensitive area by an order under this section and the Secretary of State considers that it is appropriate to do so with a view to achieving the purpose mentioned in subsection (1) above, he may, subject to such restrictions (if any) as may be set out in the order, enter into an agreement under which, in consideration of payments to be made by him—
  - (a) the absolute owner (within the meaning of section 93 of the Agricultural Holdings (Scotland) Act 1949) of any agricultural land in that area; or
  - (b) where any such owner has given his written consent to the agreement being entered into by any person having another interest in that land, that other person,
 accepts such obligations with respect to the management of that land or otherwise as may be imposed by the agreement.
- (3) Where it appears to the Secretary of State in relation to any area which is, or is to be, designated by an order under this section as a nitrate sensitive area that it is appropriate for provision for the imposition of requirements, prohibitions or restrictions to be contained in an order under this section (as well as for him to be able to enter into such agreements as are mentioned in subsection (2) above), he may, by a subsequent order under this section or, as the case may be, by the order designating that area—
  - (a) with a view to achieving the purpose mentioned in subsection (1) above, require, prohibit or restrict the carrying on on or in relation



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- to any agricultural land in that area of such activities as may be specified or described in the order; and
- (b) provide for such amounts (if any) as may be specified in or determined under the order to be paid by the Secretary of State, to such persons as may be so specified or determined, in respect of the obligations imposed in relation to that area on those persons by virtue of paragraph (a) above.
- (4) Without prejudice to the generality of subsection (3) above, provision contained in an order under this section by virtue of that subsection may—
- (a) confer power upon the Secretary of State to determine for the purposes of the order the circumstances in which the carrying on of any activities is required, prohibited or restricted and to determine the activities to which any such requirement, prohibition or restriction applies;
- (b) provide for any requirement to carry on any activity not to apply in cases where the Secretary of State has consented to a failure to carry on that activity and any conditions on which the consent has been given are complied with;
- (c) apply a prohibition or restriction in respect of any activities to cases where the activities are carried on without the consent of the Secretary of State or in contravention of any conditions subject to which any such consent is given;
- (d) provide that a contravention of a requirement, prohibition or restriction contained in the order or in a condition of a consent given in relation to or for the purposes of any such requirement, prohibition or restriction shall be an offence the maximum penalties for which shall not exceed the maximum penalties specified in subsection (7) of section 31 above;
- (e) provide for amounts paid in pursuance of any provision contained in the order to be repaid at such times and in such circumstances and with such interest as may be specified in or determined under the order;
- (f) provide (subject to any regulations under subsection (6) below) for anything falling to be determined under the order by any person to be determined in accordance with such procedure and by reference to such matters and to the opinion of such persons as may be specified in the order.
- (5) The Secretary of State shall not make an order under this section except in accordance with any applicable provisions of Schedule 1A to this Act.
- (6) The Secretary of State may, for the purposes of any orders under this section which require his consent to the carrying on of any activities or to any failure to carry on any activity, by regulations make provision with respect to—
- (a) applications for any such consent;
- (b) the conditions of any such consent;
- (c) the revocation or variation of any such consent;
- (d) the reference to arbitration of disputes about determinations on any such application;

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- (e) the imposition of charges where such an application has been made, such a consent has been given or there has been any act or omission in pursuance of any such consent; and
- (f) the registration of any such application or consent.

### **31C Registering of agreement.**

- (1) An agreement under subsection (2) of section 31B above may—
  - (a) where the land is registered in the Land Register of Scotland, be registered in that register;
  - (b) in any other case, be recorded in the appropriate Division of the General Register of Sasines.
- (2) An agreement registered or recorded under subsection (1) above shall be enforceable at the instance of the Secretary of State against persons deriving title to the land (including any person acquiring right to a tenancy by assignation or succession) from the person who entered into the agreement; provided that such an agreement shall not be enforceable against a third party who shall have in good faith and for value acquired right (whether completed by infestment or not) to the land prior to the agreement being registered or recorded as aforesaid, or against any person deriving title from such third party.
- (3) Notwithstanding the terms of any agreement registered or recorded under subsection (1) above, the parties to the agreement or any persons deriving title from them may at any time agree to terminate it; and such an agreement to terminate it shall be registered or recorded in the same manner as was the original agreement.

### **31D Powers of entry in relation to agreements under section 31B.**

The powers which by virtue of subsection (1) of section 91 of this Act are conferred in relation to any premises for the purpose—

- (a) of enabling the Secretary of State to determine whether or in what manner to exercise any power conferred on him by or under section 31B of this Act or to determine whether any provision of an order under that section is being or has been contravened; or
- (b) of enabling a river purification authority to determine whether to make an application for the purpose of paragraph 1 of Schedule 1A to this Act,

shall include power, in order to obtain information on which that determination may be made, to carry out experimental borings or other works on those premises and to install and keep monitoring and other apparatus there.

## **32 Control of discharges of trade and sewage effluent etc. into rivers and coastal waters etc.**

- (1) Subject to subsections (3) to (5) of this section, a person shall be guilty of an offence if he causes or knowingly permits—
  - (a) any trade effluent or sewage effluent to be discharged—
    - (i) into any controlled waters, or

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- (ii) from land in Scotland through a pipe into the sea outside the seaward limits of controlled waters, or
      - (iii) from a building or from plant on to or into any land or into any waters of a loch or pond which are not inland waters; or
    - (b) any matter other than trade or sewage effluent to be discharged into controlled waters from a sewer as defined by section 59(1) of the Sewerage (Scotland) Act 1968 or from a drain as so defined; or
    - (c) any matter other than trade or sewage effluent to be discharged into controlled waters from a drain which a roads authority is obliged or entitled to keep open by virtue of section 31 of the Roads (Scotland) Act 1984, and in respect of which the river purification authority in whose area the discharge occurs has, not later than the beginning of the period of three months ending with the date of the discharge, served on the roads authority a notice stating that this paragraph is to apply to the drain,
- unless the discharge is made with the consent in pursuance of section 34 of this Act of the river purification authority in whose area the discharge occurs (or, in a case falling within paragraph (a)(ii) of this subsection, of the river purification authority whose area includes the point at which the pipe passes or first passes into or under controlled waters from the sea outside them) and is in accordance with the conditions, if any, to which the consent is subject.
- (2) Where any sewage effluent is discharged as mentioned in paragraph (a) of the preceding subsection from any works or sewer vested in a local authority and the authority did not cause or knowingly permit the discharge but was bound to receive into the works or sewer, either unconditionally or subject to conditions which were observed, matter included in the discharge, the authority shall be deemed for the purposes of that subsection to have caused the discharge.
- (3) The Secretary of State may—
- (a) by an order made before subsection (1) of this section comes into force provide that that subsection shall not, while the order is in force, apply to discharges which are of a kind or in an area specified in the order and for which, if this Act had not been passed, consent in pursuance of the Rivers (Prevention of Pollution) (Scotland) Acts 1951 and 1965 would not have been required;
  - (b) by order vary or revoke any order in force by virtue of the preceding paragraph;
- and an order made by virtue of this subsection may require any river purification authority specified in the order to publish in a manner so specified such information about the order as is so specified.
- (4) Subsection (1) of this section shall not apply to any discharge which—
- (a) is from a vessel; or
  - (b) is authorised by a licence granted under Part II of the Food and Environment Protection Act 1985,
- and a person shall not be guilty of an offence under subsection (1) if—
- (i) the discharge is caused or permitted in an emergency in order to avoid danger to life or health;

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- (ii) he takes all such steps as are reasonably practicable in the circumstances for minimising the extent of the discharge and of its polluting effects; and
  - (iii) as soon as reasonably practicable after the discharge occurs, particulars of the discharge are furnished to the river purification authority in whose area it occurs.
- (5) A local authority shall not be guilty of an offence by virtue of subsection (1) of this section by reason only of the fact that a discharge from a sewer or works vested in the authority contravenes conditions of a consent relating to the discharge if—
- (a) the contravention is attributable to a discharge which another person caused or permitted to be made into the sewer or works; and
  - (b) the authority either was not bound to receive the discharge into the sewer or works or was bound to receive it there subject to conditions but the conditions were not observed; and
  - (c) the authority could not reasonably have been expected to prevent the discharge into the sewer or works;
- and a person shall not be guilty of such an offence in consequence of a discharge which he caused or permitted to be made into a sewer or works vested in a local authority if the authority was bound to receive the discharge there either unconditionally or subject to conditions which were observed.
- (6) In subsection (2) of this section and the preceding subsection, “local authority” means a local authority within the meaning of the Sewerage (Scotland) Act 1968.
- (7) A person who is guilty of an offence by virtue of subsection (1) of this section shall be liable—
- (a) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both.

### **33 Control of sanitary appliances on vessels.**

- (1) A river purification authority may by byelaws make such provision as the authority considers appropriate for prohibiting or regulating the keeping or use, on any controlled waters in the area of the authority, of vessels of a kind specified in the byelaws which are provided with sanitary appliances; and a person who contravenes any byelaw made by virtue of this section shall be guilty of an offence.
- (2) The Secretary of State may by order provide that any byelaws specified in the order which were made by virtue of section 25(1)(c) of the Rivers (Prevention of Pollution) (Scotland) Act 1951 (byelaws) shall have effect, with such modifications (if any) as are so specified, as if made by virtue of the preceding subsection.
- (3) In this section “sanitary appliance” means a water closet or other prescribed appliance (except a sink, bath and a shower-bath) which is designed to permit polluting matter to pass into the water on which the vessel in question is for the time being situated.

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- (4) A person guilty of an offence by virtue of any of the preceding provisions of this section shall be liable on summary conviction to a fine of an amount not exceeding level 4 on the standard scale or such smaller sum as may be specified in the byelaws.

### *Consents for discharges*

## **34 Consents for discharges of trade and sewage effluent etc.**

- (1) An application to a river purification authority for consent in pursuance of this section for discharges of any effluent or other matter shall be accompanied or supplemented by all such information as the authority may reasonably require; and the authority may if it thinks fit treat an application for consent for discharges at two or more places as separate applications for consent for discharges at each of those places.
- (2) Subject to the following section, it shall be the duty of a river purification authority to which an application for consent is made in pursuance of this section—
- (a) to give the consent either unconditionally or subject to conditions or to refuse it; and
  - (b) not to withhold the consent unreasonably;
- and if within the period of three months beginning with the date when an application for consent is received by the authority, or within such longer period as may at any time be agreed upon in writing between the authority and the applicant, the authority has neither given nor refused the consent nor informed the applicant that the application has been transmitted to the Secretary of State in pursuance of the following section, the authority shall be deemed to have refused the consent.
- (3) If it appears to the authority that a person has, without the authority's consent, caused or permitted matter to be discharged in its area in contravention of section 32(1) of this Act and that a similar contravention by that person is likely, the authority may if it thinks fit serve on him an instrument in writing giving its consent, subject to conditions specified in the instrument, for discharges of a kind so specified; but consent given in pursuance of this subsection shall not relate to any discharge which occurred before the instrument giving the consent was served on the recipient of the instrument.
- (4) The conditions subject to which the authority may give its consent in pursuance of this section shall be such reasonable conditions as the authority thinks fit; and without prejudice to the generality of the preceding provisions of this subsection those conditions may include reasonable 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 period during which the discharges may be made;
  - (c) as to the provision of facilities for taking samples of the matter discharged and in particular as to the provision, maintenance and use

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of manholes, inspection chambers, observation wells and boreholes in connection with the discharges;

- (d) as to the provision, maintenance and testing of meters for measuring the volume and rate of the discharges and apparatus for determining the nature, composition and temperature of the discharges;
- (e) 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;
- (f) 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
- (g) 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;

and it is hereby declared that consent may be given in pursuance of this section subject to different conditions in respect of different periods.

- (5) A person who, in an application for consent in pursuance of this section, makes any statement which he knows to be false in a material particular or recklessly makes any statement which is false in a material particular shall be guilty of an offence and liable on summary conviction to a fine not exceeding the statutory maximum or on conviction on indictment to a fine.

### **35 Reference to Secretary of State of certain applications for consent.**

- (1) The Secretary of State may, either in consequence of representations made to him or otherwise, direct a river purification authority to transmit to him for determination applications for consent in pursuance of the preceding section which are specified in the direction or are of a kind so specified, and it shall be the duty of the authority to comply with the direction and to inform each relevant applicant that his application has been transmitted to the Secretary of State.
- (2) Before determining an application transmitted to him by a river purification authority in pursuance of this section the Secretary of State may if he thinks fit, and shall if a request to be heard with respect to the application is made to him in accordance with regulations by the applicant or the authority, cause a local inquiry to be held in pursuance of section 96 of this Act into the application or afford to the applicant and the authority an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.
- (3) Where in pursuance of the preceding subsection the Secretary of State affords to an applicant and a river purification authority an opportunity of appearing before and being heard by a person with respect to the application in question, it shall be the duty of the Secretary of State to afford an opportunity of appearing before and being heard by that person to any person who, in pursuance of subsection (1)(c) or (5) of the following section, has made representations relating to the application.

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- (4) It shall be the duty of the Secretary of State to determine an application transmitted to him by a river purification authority in pursuance of this section by directing the authority to refuse its consent in pursuance of the preceding section in consequence of the application or to give the consent either unconditionally or subject to such conditions as are specified in the direction, and it shall be the duty of the authority to comply with the direction.

### **36 Provisions supplementary to ss. 34 and 35.**

- (1) Where a river purification authority receives an application for consent in pursuance of section 34 of this Act or serves an instrument in pursuance of subsection (3) of that section, it shall be the duty of the authority, before deciding whether to give or refuse consent in pursuance of the application or, as the case may be, after serving the instrument—
- (a) to publish in the prescribed form notice of the application or instrument in two successive weeks in a newspaper or newspapers circulating in—
    - (i) the area or areas in which the places are situated at which it is proposed in the application that the discharges should be made or, as the case may be, at which discharges are the subject of consent given by the instrument, and
    - (ii) the area or areas appearing to the authority to be in the vicinity of any controlled waters which the authority considers likely to be affected by the discharges,and, not earlier than the day following that on which the first publication of the notice is completed in all relevant areas in pursuance of the preceding provisions of this paragraph, to publish such a notice in the Edinburgh Gazette;
  - (b) to send copies of the application or instrument to each local authority in whose area it is proposed in the application that a discharge should be made or in whose area a discharge is the subject of consent given by the instrument and, in the case of an application or instrument relating to coastal waters, relevant territorial waters or an application relating to waters outside the seaward limits of relevant territorial waters, to the Secretary of State; and
  - (c) to consider any written representations relating to the application or instrument which are made to the authority by any person within the period of six weeks beginning with the date on which the notice of the application or instrument is published in the Edinburgh Gazette.
- (2) For the purposes of subsection (1) above, “local authority” means a regional or district council, and any place at sea at which it is proposed in an application that a discharge should be made shall be treated as situated at the point on land nearest to that place.
- (3) Where notice of an application is published by a river purification authority in pursuance of subsection (1)(a) of this section, the authority shall be entitled to recover the cost of publication from the applicant.
- (4) A river purification authority shall be entitled to disregard the provisions of subsection (1) of this section in relation to an application (except so much

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of paragraph (b) of that subsection as requires copies of the application to be sent to the Secretary of State) if the authority proposes to give consent in pursuance of the application and considers that the discharges in question will have no appreciable effect on the water into which they are proposed to be made.

- (5) The preceding provisions of this section shall have effect with prescribed modifications in relation to an application which is the subject of a direction in pursuance of subsection (1) of the preceding section.
- (6) Where a river purification authority proposes to give consent in pursuance of section 34 of this Act in consequence of an application in respect of which representations have been made in pursuance of subsection (1)(c) of this section then—
  - (a) it shall be the duty of the authority to serve notice of the proposal on the person who made the representations and to include in the notice a statement of the effect of the following paragraph; and
  - (b) that person may, within the period of twenty-one days beginning with the day on which the notice of the proposal is served on him, request the Secretary of State in accordance with regulations to give a direction in pursuance of subsection (1) of the preceding section in respect of the application; and
  - (c) it shall be the duty of the authority not to give consent in consequence of the application before the expiration of that period and, if within that period the said person makes a request in pursuance of the preceding paragraph and serves notice of the request on the authority, not to give consent in pursuance of the application unless the Secretary of State has given notice to the authority that he declines to comply with the request;and in calculating in the case of any application the period of three months mentioned in section 34(2) of this Act or a longer period there mentioned there shall be disregarded any period during which the authority to which the application was made is prohibited by virtue of paragraph (c) of this subsection from giving consent in consequence of the application.
- (7) A consent for any discharges which is given in pursuance of section 34 of this Act is not limited to discharges by a particular person and accordingly extends to the discharges in question which are made by any person.

### **37 Revocation of consents and alteration and imposition of conditions.**

- (1) It shall be the duty of a river purification authority by which a consent is given in pursuance of section 34 of this Act to review from time to time the consent and the conditions, if any, to which the consent is subject; and subject to the following section the authority may, by a notice served on the person making a discharge in pursuance of the consent, revoke the consent if it is reasonable to do so or make reasonable modifications of the said conditions or, in the case of an unconditional consent, provide that it shall be subject to reasonable conditions specified in the notice.
- (2) Subject to the following section, the Secretary of State may—
  - (a) for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to any [F3EU] obligation or to any



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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 made to him or otherwise,

direct a river purification authority to serve a notice in pursuance of the preceding subsection containing such provisions as are specified in the direction and it shall be the duty of the authority to comply with the direction; and if the authority fails to serve the notice within such period as the Secretary of State may allow he may serve the notice on behalf of the authority, and it is hereby declared that for the purposes of this Part of the Act a notice served on behalf of an authority by virtue of this subsection is served by the authority.

### **38 Restriction on variation and revocation of consent and of previous variation.**

(1) Each instrument signifying the consent of a river purification authority in pursuance of section 34 of this Act shall specify a period during which no notice in pursuance of subsection (1) or (2)(c) of the preceding section is to be served in respect of the consent without the written agreement of a person making a discharge in pursuance of the consent; and the said period shall be a reasonable period of not less than two years beginning with the day on which the consent takes effect.

(2) Each notice served by a river purification authority in pursuance of subsection (1) or (2)(c) of the preceding section (except a notice which only revokes a consent or conditions) shall specify a period during which a subsequent notice in pursuance of that subsection which alters the effect of the first-mentioned notice is not to be served without the written agreement of a person making a discharge in pursuance of the consent to which the first-mentioned notice relates; and the said period shall be a reasonable period of not less than two years beginning with the day on which the first-mentioned notice is served.

(3) The authority 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 authority's compliance with a direction given in relation to any consent by virtue of section 37(2)(b) of this Act if—

(a) in complying with that direction the authority does anything which, apart from that direction, it would be precluded from doing by a restriction imposed under subsection (1) or (2) above; and

(b) the direction is not shown to have been 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 authority at the beginning of that period;

and in this paragraph 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

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discharge or to the combined effect of the matter discharged and any other matter.

- (4) A restriction imposed under subsection (1) or (2) of this section shall not prevent the service by the authority of a notice by virtue of section 37(1) or (2)(c) of this Act in respect of a consent given under section 34(3) of this Act if—
- (a) the notice is served not more than three months after the beginning of the period specified in section 36(1)(c) of this Act for the making of representations with respect to the consent; and
  - (b) the authority or, as the case may be, the Secretary of State considers, in consequence of any representations received by it or him within that period, that it is appropriate for the notice to be served.

### **39 Appeals to Secretary of State.**

- (1) Any questions as to whether—
- (a) a river purification authority has unreasonably withheld its consent in pursuance of section 31(3) or 34 of this Act or regulations made by virtue of section 31(4) of this Act or has given its consent in pursuance of the said section 34 or such regulations subject to conditions which are unreasonable; or
  - (b) a notice served in pursuance of section 37(1) of this Act contains terms (other than a term required by subsection (2) of the preceding section) which are unreasonable; or
  - (c) the period specified in any instrument or notice in pursuance of subsection (1) or (2) of the preceding section is unreasonable,
- shall be determined for the purposes of this Part of this Act by the Secretary of State; but no question relating to a determination of the Secretary of State in pursuance of section 35(4) of this Act shall be referred to him in pursuance of this subsection and any such determination shall be final.
- (2) Provision may be made by regulations as to the manner in which and the time within which a question may be referred or a request may be made in pursuance of the preceding provisions of this section and as to the procedure for dealing with such a reference or request.
- (3) In any case where—
- (a) a question as to whether a river purification authority has unreasonably withheld its consent in pursuance of section 34 of this Act, or has given its consent in pursuance of that section subject to conditions which are unreasonable, is referred to the Secretary of State in pursuance of this section; and
  - (b) representations relating to the application for the consent in question were made to the authority in pursuance of section 36(1)(c) of this Act,

it shall be the duty of the Secretary of State, before he determines the question, to secure that the authority has served notice of the reference on the persons who made the representations and to take account of any further written representations relating to the application which are received by him from those persons within a prescribed period.

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- (4) Where a question is referred to the Secretary of State in pursuance of subsection (1) of this section and he determines that the consent in question was unreasonably withheld or that the conditions or terms or period in question are or is unreasonable, he shall give to the relevant river purification authority such a direction as he thinks fit with regard to the consent, conditions, terms or period and it shall be the duty of the authority to comply with the direction.
- (5) The withholding by a river purification authority of such a consent as is mentioned in subsection (1) of this section, the conditions subject to which such a consent is given and such terms and period as are so mentioned shall be treated as reasonable for the purposes of this Part of this Act until the contrary is determined in pursuance of subsection (1) of this section except that where a question as to the reasonableness of the conditions of a consent given in pursuance of regulations made by virtue of section 31(4) of this Act is referred to the Secretary of State in pursuance of this section the consent shall be treated for those purposes as unconditional while the reference is pending.
- (6) At any stage of the proceedings on a reference to the Secretary of State in pursuance of this section he may, and shall if so directed by the Court of Session, state in the form of a special case for the decision of the court any question of law arising in those proceedings.

#### **40 Transitional provisions relating to consents.**

- (1) Regulations may provide—
  - (a) for any consent for discharges which was given in pursuance of the Rivers (Prevention of Pollution) (Scotland) Acts 1951 and 1965 to have effect for any of the purposes of this Part of this Act as if given in pursuance of prescribed provisions of section 34 of this Act; and
  - (b) for any conditions to which such a consent was subject in pursuance of any of those enactments to have effect for any of those purposes as if attached to the consent in pursuance of prescribed provisions of this Part of this Act.
- (2) Regulations may provide for the terms of a consent for an outlet which was given in pursuance of the Rivers (Prevention of Pollution) (Scotland) Act 1951 and for conditions to which such a consent was subject in pursuance of that Act or which were imposed with respect to the outlet in pursuance of section 28(4) of that Act—
  - (a) to have effect, with or without modifications, for any of the purposes of this Part of this Act as if the terms or conditions were conditions attached to a consent given in pursuance of section 34 of this Act for discharges from the outlet; or
  - (b) to be treated, with or without modifications, for any of those purposes in such other manner as may be prescribed.
- (3) An application for such a consent as is mentioned in subsection (1) of this section which is pending immediately before the relevant day shall be treated on and after that day as an application for consent in pursuance of section 34 of this Act which was made on the day on which it was actually made.

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- (4) Where an application for consent in pursuance of section 34 of this Act in respect of any discharge is duly made to a river purification authority before the relevant day and the discharge in question is not such as is mentioned in section 32(3)(a) of this Act and is substantially a continuation of a previous discharge which during the year ending with the 30th April 1974 was lawfully made without such consent as is so mentioned (any reduction of the temperature, volume or rate of the discharge as compared with that of the previous discharge being disregarded), the authority shall be deemed to have given unconditionally the consent applied for—
  - (a) until the authority actually gives the consent unconditionally; or
  - (b) if the authority decides to refuse consent or to give it subject to conditions, until the expiration of the period of three months beginning with the date when the authority serves on the applicant notice of the decision; or
  - (c) if during that period the applicant appeals to the Secretary of State against the decision in pursuance of the preceding section, until the determination of the appeal.
- (5) Regulations may provide for any appeal which immediately before the relevant day is pending in pursuance of the Rivers (Prevention of Pollution) (Scotland) Acts 1951 and 1965 to be treated on and after that day as an appeal in pursuance of prescribed provisions of this Part of this Act.
- (6) In this section “the relevant day” means 31st January 1985.

*Ancillary provisions relating to control of discharges*

#### **41 Registers.**

- (1) It shall be the duty of river purification authorities to maintain in accordance with regulations, registers containing prescribed particulars of—
  - (a) any notices of water quality objectives or other notices served under section 30C above;
  - (b) application for consents—
    - (i) made to the authorities in pursuance of this Part of this Act;
    - (ii) sent to the Secretary of State in pursuance of section 34 of this Act (as modified by regulations made under section 55 of this Act);
  - (c) consents given in pursuance of any provision of this Part of this Act (except section 40(4)) and the conditions to which the consents are subject;
  - (d) samples—
    - (i) of effluent taken by the authorities in pursuance of section 19 of the Rivers (Prevention of Pollution) (Scotland) Act 1951;
    - (ii) of effluent taken by islands councils from discharges made by them in their own areas for the purposes of their functions relating to the pollution of controlled waters; and
    - (iii) of water taken by the authorities;

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and information produced by analyses of the samples and the steps taken in consequence of the information;

(e) certificates issued in pursuance of the following section.

(2) It shall be the duty of a river purification authority—

- (a) to secure that registers maintained by the authority in pursuance of the preceding subsection are, after such date as is prescribed with respect to the registers, open to inspection by the public free of charge at all reasonable hours; and
- (b) to afford members of the public reasonable facilities for obtaining from the authority, on payment of reasonable charges, copies of entries in the register.

#### **42 Power of Secretary of State to exempt applications, consents and conditions etc. from publicity.**

(1) If a person who proposes to make or has made an application to a river purification authority for any consent in pursuance of section 34 of this Act (hereafter in this subsection referred to as “the relevant application”)—

- (a) applies to the Secretary of State within a prescribed period for a certificate providing that section 36(1) of this Act and paragraphs (b) to (d) of subsection (1) of the preceding section shall not apply to the relevant application or to any consent given or conditions imposed in consequence of the relevant application or to any sample of effluent taken from a discharge for which consent is given in consequence of the relevant application or to information produced by analysis of such a sample; and
- (b) satisfies the Secretary of State that it would—
  - (i) prejudice to an unreasonable degree some private interest by disclosing information about a trade secret, or
  - (ii) be contrary to the public interest,if a certificate were not issued in pursuance of his application to the Secretary of State,

the Secretary of State may issue a certificate to that person providing that section 36(1) of this Act and those paragraphs shall not apply to such of the things mentioned in paragraph (a) of this subsection as are specified in the certificate.

(2) If a person who is making or proposes to make a discharge which is the subject of a consent given in pursuance of the Rivers (Prevention of Pollution) (Scotland) Acts 1951 and 1965—

- (a) applies to the Secretary of State for a certificate providing that subsection (1)(c) or (d) of the preceding section shall not apply to the consent or any conditions to which the consent is subject or any sample of effluent taken from a discharge to which the consent relates or any information produced by analysis of such a sample; and
- (b) satisfies the Secretary of State as mentioned in paragraph (b) of the preceding subsection,

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the Secretary of State may issue a certificate to that person providing that the said subsection (1)(c) or (d) shall not apply to such of the things mentioned in paragraph (a) of this subsection as are specified in the certificate.”.

#### Textual Amendments

**F3** Words in Act substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3, 6 (with art. 3(2)(3)4(2)6(4)(5))

5 For sections 46 to 51 there shall be substituted the following sections—

#### *“ Miscellaneous*

#### **46 Operations by river purification authorities to remedy or forestall pollution of water.**

- (1) Where it appears to a river purification authority that any poisonous, noxious or polluting matter or any solid waste matter is likely to enter, or is or was present in, any controlled waters in its area, the authority may carry out in its area or elsewhere such operations as it considers appropriate—
  - (a) in a case where the matter appears likely to enter such waters, for the purpose of preventing it from doing so; and
  - (b) in a case where the matter appears to be or to have been present in such waters, for the purpose of removing or disposing of the matter or of remedying or mitigating any pollution caused by its presence in the waters or of restoring the waters (including the fauna and flora dependent on the aquatic environment of the waters), so far as it is reasonably practicable to do so, to the state in which they were immediately before the matter became present in the waters;

but nothing in this subsection empowers a river purification authority to impede or prevent the making of any discharge in pursuance of a consent given by any authority by virtue of section 34 of this Act.
- (2) Where a river purification authority carries out any operations in pursuance of this section the authority shall, subject to the following subsection, be entitled to recover the costs of doing so from any persons who caused or knowingly permitted the matter in question to be present at the place from which it was likely in the opinion of the authority to enter the controlled waters or, as the case may be, to be present in the controlled waters.
- (3) No such costs shall be payable by a person—
  - (a) in so far as he satisfies the court in which it is sought to recover the costs that the costs were incurred unnecessarily; or
  - (b) for any operations in respect of water from an abandoned mine which that person permitted to reach such a place as is mentioned in the preceding subsection or to enter the controlled waters.
- (4) In determining the damage which a person has suffered in consequence of pollution in respect of which operations have been or may be carried out in pursuance of this section, account shall be taken of the extent to which it is shown that the damage has been reduced by operations in pursuance of this

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section and of the extent to which it is shown that the damage is likely to be so reduced.

#### **47 Duty of river purification authorities to deal with waste from vessels etc.**

- (1) It shall be the duty of each river purification authority—
  - (a) to arrange for the collection and disposal of waste from vessels in its area which appears to the authority to need collection in consequence of the provisions of section 33 of this Act; and
  - (b) to arrange for the provision of facilities for the washing out of prescribed appliances from vessels in its area.
- (2) A river purification authority may arrange for the provision of facilities by way of water closets, urinals and wash basins for the use of persons from vessels in the authority's area.
- (3) A port local authority constituted under Part X of the Public Health (Scotland) Act 1897 shall have power to make arrangements with a river purification authority for the purposes of any of the preceding provisions of this section.

#### **48 Power of river purification authorities to exclude unregistered vessels from rivers etc.**

- (1) Where it appears to a river purification authority to be appropriate to do so for the purpose of preventing the pollution of inland waters in its area, the authority may make byelaws providing that vessels shall not be on any such waters which are specified in the byelaws unless the vessels are registered by the authority in accordance with the byelaws or are exempted by the byelaws from registration; and a person who causes or knowingly permits a vessel to be on inland waters in contravention of byelaws made by virtue of this subsection shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or such smaller sum as may be specified in the byelaws.
- (2) Byelaws made by a river purification authority in pursuance of the preceding subsection may authorise the authority to make reasonable charges in respect of the registration of vessels in pursuance of the byelaws; and no charges shall be payable, by persons in or from vessels registered by the authority in pursuance of the byelaws, in respect of the use by those persons of facilities provided in pursuance of the preceding section by or by arrangement with the authority.

#### **49 Deposits and vegetation in rivers etc.**

- (1) If without the consent of the relevant river purification authority, which shall not be unreasonably withheld,—
  - (a) a person removes from any part of the bottom, channel or bed of any inland waters a deposit accumulated by reason of any dam, weir or sluice holding back the waters and does so by causing the deposit to be carried away in suspension in the waters; or

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- (b) any substantial amount of vegetation cut or uprooted in any inland waters, or so near to any such waters that it falls into it, is allowed to remain in the waters by the wilful default of any person, then, subject to the following subsection, that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (2) Nothing in paragraph (a) of the preceding subsection applies to anything done in the exercise of statutory powers conferred by or under any enactment relating to land drainage, flood prevention or navigation.
- (3) Regulations may provide that any reference to inland waters in subsection (1) of this section shall be construed as including a reference to such coastal waters as are prescribed for the purposes of that subsection.
- (4) Any question as to whether the consent of a river purification authority in pursuance of subsection (1) of this section is unreasonably withheld shall be determined by the Secretary of State; and any consent given in pursuance of section 24 of the Rivers (Prevention of Pollution) (Scotland) Act 1951 (which is superseded by this section) shall be treated for the purposes of this section as given in pursuance of this section.

## **50 Investigation of water pollution problems arising from closure of mines.**

Each river purification authority shall have power to carry out studies for the purpose of ascertaining—

- (a) what problems relating to the pollution of controlled waters may arise or have arisen in consequence of the abandonment of any mine in its area or might arise if any such mine were abandoned; and
- (b) what steps are likely to be appropriate for the purpose of dealing with the problems and what the cost of taking those steps would be.

## **51 Codes of good agricultural practice.**

- (1) The Secretary of State may by order made by statutory instrument approve any code of practice issued (whether by him or by another person) for the purpose of—
  - (a) giving practical guidance to persons engaged in agriculture with respect to activities that may affect controlled waters; and
  - (b) promoting what appear to him to be desirable practices by such persons for avoiding or minimising the pollution of any such waters,
 and may at any time by such an order approve a modification of such a code or withdraw his approval of such a code or modification.
- (2) A contravention of a code of practice as for the time being approved under this section shall not of itself give rise to any criminal or civil liability, but a river purification authority shall take into account whether there has been or is likely to be any such contravention in determining when and how it should exercise any powers conferred on it by regulations under section 31A of this Act.
- (3) The Secretary of State shall not make an order under this section unless he has first consulted the river purification authorities.”.



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6 For sections 53 to 56 there shall be substituted the following sections—

**“53 Charges in respect of consents, etc.**

(1) Where—

- (a) an application is made to a river purification authority for a consent for the purposes of sections 31(3), 32 or 49 of this Act;
- (b) the authority gives a consent under section 34(3) of this Act or a consent for the purposes of section 31(3) or 49 of this Act; or
- (c) a consent for the purposes of sections 31(3), 32 or 49 of this Act is for the time being in force,

the authority may require the payment to it of such charges as may be specified in or determined under a scheme made by it under this section.

(2) The persons who shall be liable to pay charges which are required to be paid by virtue of a scheme under this section shall be—

- (a) in the case of a charge by virtue of subsection (1)(a) above, the person who makes the application;
- (b) in the case of a charge by virtue of subsection (1)(b) above, any person who is authorised to do anything by virtue of the consent and on whom the instrument giving the consent is served; and
- (c) in the case of a charge by virtue of subsection (1)(c) above, any person who makes a discharge in pursuance of the consent at any time during the period to which, in accordance with the scheme, the charge relates;

and provision made by a scheme for the purposes of paragraph (c) above may impose a single charge in respect of the whole period for which the consent is in force or separate charges in respect of different parts of that period or both such a single charge and such separate charges.

(3) An authority shall not make a scheme under this section unless its provisions have been approved by the Secretary of State; and the consent of the Treasury shall be required for the giving of such an approval.

(4) Before submitting a scheme under this section to the Secretary of State for his approval an authority shall, in such manner as it considers appropriate for bringing it to the attention of persons likely to be affected by it, publish a notice setting out its proposals and specifying the period within which representations with respect to the proposals may be made to the Secretary of State.

(5) Where any proposed scheme has been submitted to the Secretary of State for his approval, it shall be the duty of the Secretary of State, in determining whether or not to approve the scheme or to approve it subject to modifications—

- (a) to consider any representations duly made to him; and
- (b) to have regard to the matters specified in subsection (6) below.

(6) The matters mentioned in subsection (5)(b) above are—

- (a) the desirability of ensuring that the amount recovered by the authority by way of charges fixed by or under schemes under this section does not exceed, taking one year with another, such amount

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as appears to the Secretary of State to be reasonably attributable to the expenses incurred by the authority in carrying out its functions under sections 34 to 38 and 49 of this Act and otherwise in relation to discharges into controlled waters; and

- (b) the need to ensure that no undue preference is shown, and that there is no undue discrimination, in the fixing of charges by or under the scheme.

(7) A scheme under this section may—

- (a) make provision with respect to the times and methods of payment of the charges which are required to be paid by virtue of the scheme;
- (b) make different provision for different cases, including different provision in relation to different persons, circumstances or localities; and
- (c) contain supplemental, consequential and transitional provision for the purposes of the scheme;

and such a scheme may revoke or amend a previous scheme under this section.

- (8) It shall be the duty of a river purification authority to take such steps as it considers appropriate for bringing the provisions of any scheme under this section which is for the time being in force to the attention of persons likely to be affected by them.

#### **54 Directions to the river purification authority.**

- (1) Directions of a general or specific character may be given to each river purification authority by the Secretary of State with respect to the carrying out of its functions and it shall be the duty of each river purification authority to comply with any such direction.
- (2) Without prejudice to the generality of the power conferred by subsection (1) of this section, directions under that subsection may include such directions as the Secretary of State considers appropriate in order to enable Her Majesty's Government in the United Kingdom to give effect to—
  - (a) any Community obligations; or
  - (b) any international agreement to which the United Kingdom is for the time being a party.
- (3) Any power of the Secretary of State otherwise than by virtue of this section to give direction to a river purification authority shall be without prejudice to the power conferred by this section.

#### *Supplemental*

#### **55 Discharges by islands councils.**

- (1) This part of this Act shall have effect with prescribed modifications in relation to discharges by an islands council in its area.
- (2) Without prejudice to the generality of the power to make regulations conferred by the preceding subsection, any regulations made in pursuance of that subsection may provide for consents required by islands councils for

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the purposes of this Part of this Act as modified by virtue of that subsection to be or be deemed to be given by the Secretary of State.

## **56 Interpretation etc. of Part II.**

- (1) Except where the context otherwise requires, in this Part of this Act—
- “agriculture” and “agricultural” have the same meanings as in the Agriculture (Scotland) Act 1948;
  - “coastal waters”, “controlled waters”, “ground waters”, “inland waters” and “relevant territorial waters” have the meanings given by section 30A(1) above;
  - “effluent” means any liquid, including particles of matter and other substances in suspension in the liquid;
  - “micro-organism” includes any microscopic biological entity which is capable of replication;
  - “sewage effluent” includes any effluent from the sewage disposal or sewerage works of a local authority within the meaning of the Sewerage (Scotland) Act 1968;
  - “substance” includes micro-organisms and any natural or artificial substance or other matter, whether it is in solid or liquid form or in the form of a gas or vapour;
  - “trade effluent” includes any effluent which is discharged from premises used for carrying on any trade or industry, other than surface water and domestic sewage;
  - “underground strata” means strata subjacent to the surface of any land;
  - “water authority” means an authority established in accordance with section 3 of the Water (Scotland) Act 1980;
  - “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers, and passages through which water flows except mains and other pipes which belong to the water authority or are used by a water authority or any other person for the purposes only of providing a supply of water to any premises.
- (2) In this Part of this Act—
- (a) any reference to the waters of any loch or pond or of any river or watercourse includes a reference to the bottom, channel or bed of any loch, pond, river or, as the case may be, watercourse which is for the time being dry; and
  - (b) any reference to water contained in underground strata is a reference to water so contained otherwise than in a sewer, pipe, reservoir, tank or other underground works constructed in any such strata.
- (3) For the purposes of the definition of “trade effluent” in subsection (1) above any premises (whether on land or not) wholly or mainly used (whether for profit or not) for agricultural purposes or for the purposes of fish farming or for scientific research or experiment shall be deemed to be (and in the case of fish farms, always to have been) premises used for carrying on a trade.
- (4) For the purposes of this Part of this Act the area of a river purification authority shall include all controlled waters off the coast of the area which is the authority’s area apart from this subsection; and any question as to

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whether any place is included in the area of a river purification authority by virtue of this subsection shall be determined by the Secretary of State.

(5) For the purposes of this Part of this Act a notice imposing conditions with respect to discharges which was given by a river purification authority in pursuance of—

- (a) section 28(4) of the Rivers (Prevention of Pollution) (Scotland) Act 1951; or
- (b) section 1(5) of the Rivers (Prevention of Pollution) (Scotland) Act 1965,

shall be treated as having given the authority's consent in pursuance of the Act in question for those discharges subject to those conditions.

(6) Section 30(5) of this Act shall have effect in relation to this Part of this Act as if for any reference to Part I of this Act there were substituted a reference to this Part of this Act."

7 In subsection (1) of section 104 (orders and regulations), for the words "section 33(4), 44(5), 52, 53 or 109(2)" there shall be substituted the words "section 44(5) or 109(2)".

8 After Schedule 1 there shall be inserted the following Schedule—

“SCHEDULE  
1A

ORDERS DESIGNATING NITRATE SENSITIVE AREAS: SCOTLAND

**PART I**

APPLICATIONS BY RIVER PURIFICATION AUTHORITIES FOR DESIGNATION ORDERS

*Orders made only on application*

1 (1) Subject to sub-paragraph (2) below, the Secretary of State shall not make an order under section 31B of this Act by virtue of which any land is designated as a nitrate sensitive area, except with the consent of the Treasury and on an application which—

- (a) has been made by a river purification authority in accordance with paragraph 2 below; and
- (b) by virtue of sub-paragraph (2)(a) of that paragraph identifies the controlled waters with respect to which that land is so comprised by the order.

(2) This paragraph shall not apply to an order which reproduces or amends an existing order without adding any land appearing to the Secretary of State to constitute a significant area to the land already comprised in the areas for the time being designated as nitrate sensitive areas.

*Procedure for applications*

2 (1) A river purification authority shall not, for the purposes of paragraph 1 above, apply for the making of any order under section 31B of this Act, by

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which any land would be comprised in the areas for the time being designated as nitrate sensitive areas unless it appears to the authority—

- (a) that pollution is or is likely to be caused by the entry of nitrate into controlled waters as a result of, or of anything done in connection with, the use of particular land for agricultural purposes; and
  - (b) that the provisions for the time being in force in relation to those waters and that land are not sufficient, in the opinion of the authority, for preventing or controlling such an entry of nitrate into those waters.
- (2) An application under this paragraph shall identify—
- (a) the controlled waters appearing to the authority to be the waters which the nitrate is entering or is likely to enter; and
  - (b) the land appearing to the authority to be the land the use of which for agricultural purposes, or the doing of anything in connection with whose use for agricultural purposes, is resulting or is likely to result in the entry of nitrate into those waters.
- (3) An application under this paragraph shall be made by serving a notice containing the application on the Secretary of State.

## PART II

### ORDERS CONTAINING MANDATORY PROVISIONS ETC.

#### *Publication of proposal for order containing mandatory provisions*

- 3 (1) This paragraph applies where the Secretary of State proposes to make an order under section 31B of this Act which—
- (a) makes or modifies any such provision as is authorised by subsection (3)(a) of that section; and
  - (b) in doing so, contains provision which is not of one of the following descriptions, that is to say—
    - (i) provision reproducing existing provisions without modification and in relation to substantially the same area; and
    - (ii) provision modifying any existing provisions so as to make them less onerous.
- (2) The Secretary of State shall, before making any such order as is mentioned in sub-paragraph (1) above—
- (a) publish a notice with respect to the proposed order at least once in each of two successive weeks, in one or more newspapers circulating in the locality in relation to which the proposed order will have effect;
  - (b) not later than the date on which that notice is first published, serve a copy of the notice on—
    - (i) the river purification authority;
    - (ii) every local authority whose area includes the whole or any part of that locality; and

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(iii) in the case of an order containing any such provision as is authorised by section 31B(3)(b) of this Act, such owners and occupiers of agricultural land in that locality as appear to the Secretary of State to be likely to be affected by the obligations in respect of which payments are to be made under that provision;

and

- (c) publish a notice in the Edinburgh Gazette which—
- (i) names every local authority on whom a notice is required to be served under this paragraph;
  - (ii) specifies a place where a copy of the proposed order and of any relevant map or plan may be inspected; and
  - (iii) gives the name of every newspaper in which the notice required by virtue of paragraph (a) above was published and the date of an issue containing the notice.

(3) The notice required by virtue of sub-paragraph (2)(a) above to be published with respect to any proposed order shall—

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

#### *Supply of copies of proposed orders*

- 4 The Secretary of State shall, at the request of any person and on payment by that person of such charge (if any) as the Secretary of State may reasonably require, furnish that person with a copy of any proposed order of which notice has been published under paragraph 3 above.

#### *Modifications of proposals*

- 5 (1) Where notices with respect to any proposed order have been published and served in accordance with paragraph 3 above and the period of forty-two days mentioned in sub-paragraph (3)(b) of that paragraph has expired, the Secretary of State may make the order either in the proposed terms or, subject to sub-paragraph (2) below (but without any further compliance with paragraph 3 above), in those terms as modified in such manner as he thinks fit, or may decide not to make any order.
- (2) The Secretary of State shall not make such a modification of a proposed order of which notice has been so published and served as he considers is likely adversely to affect any persons unless he has given such notices as he considers appropriate for enabling those persons to object to the modification.
- (3) Subject to sub-paragraph (2) above and to the service of notices of the proposed modification on such local authorities as appear to him to be likely to be interested in it, the modifications that may be made by the Secretary of

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State include any modification of the area designated by the proposed order as a nitrate sensitive area.

*Consideration of objections etc.*

- 6 Without prejudice to section 96 of this Act, where notices with respect to any proposed order have been published and served in accordance with paragraph 3 above, the Secretary of State may, if he considers it appropriate to do so, hold a local inquiry before deciding whether or not to make the proposed order or to make it with modifications.

*Consent of Treasury for payment provisions*

- 7 The consent of the Treasury shall be required for the making of any order under section 31B of this Act the making of which does not require the consent of the Treasury by virtue of paragraph 1 above but which contains any such provision as is authorised by subsection (3)(b) of that section.
- 8 In this Part, “local authority” means a regional, islands or district council.”

**Changes to legislation:**

There are currently no known outstanding effects for the Water Act 1989, SCHEDULE 23.