



# Water Industry Act 1991

## 1991 CHAPTER 56

### PART IV

#### SEWERAGE SERVICES

#### CHAPTER III

#### TRADE EFFLUENT

##### Modifications etc. (not altering text)

- C1** Pt. 4 Ch. 3 (ss. 118-141) amended (27.8.1993) by [1993 c. 12, ss. 40, 51\(2\), Sch. 3 Pt. I para. 8](#) (with ss. 42, 46).  
Pt. 4 Ch. 3 (ss. 118-141) modified (1.2.1996) by [1995 c. 25, s. 5](#) (with ss. 7(6), 115, 117); S.I. [1996/186, art. 2](#)  
Pt. 4 Ch. 3 (ss. 118-141): transfer of functions (1.4.1996) by [1995 c. 25, s. 2\(2\)\(b\)](#) (with ss. 7(6), 115, 117); S.I. [1996/186, art. 3](#)
- C2** Pt. 4 Ch. 3 modified by S.I. 2010/675, Sch. 23 Pt. 8 para. 3 Table 9 (as substituted (1.10.2011) by [The Environmental Permitting \(England and Wales\) \(Amendment\) Regulations 2011 \(S.I. 2011/2043\)](#), reg. 1(b), [Sch. 1](#))

#### *Consent for discharge of trade effluent into public sewer*

#### **118 Consent required for discharge of trade effluent into public sewer.**

- (1) Subject to the following provisions of this Chapter, the occupier of any trade premises in the area of a sewerage undertaker may discharge any trade effluent proceeding from those premises into the undertaker's public sewers if he does so with the undertaker's consent.
- (2) Nothing in this Chapter shall authorise the discharge of any effluent into a public sewer otherwise than by means of a drain or sewer.

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- (3) The following, that is to say—
- (a) the restrictions imposed by paragraphs (a) and (b) of section 106(2) above; and
  - (b) section 111 above so far as it relates to anything falling within paragraph (a) or (b) of subsection (1) of that section,
- shall not apply to any discharge of trade effluent which is lawfully made by virtue of this Chapter.
- (4) Accordingly, subsections (3) to (8) of section 106 above and sections 108 and 109 above shall have effect in relation to communication with a sewer for the purpose of making any discharge which is lawfully made by virtue of this Chapter as they have effect in relation to communication with a sewer for the purpose of making discharges which are authorised by subsection (1) of section 106 above.
- (5) If, in the case of any trade premises, any trade effluent is discharged without such consent or other authorisation as is necessary for the purposes of this Chapter, the occupier of the premises shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to a fine.

#### *Consents on an application*

### **119 Application for consent.**

- (1) An application to a sewerage undertaker for a consent to discharge trade effluent from any trade premises into a public sewer of that undertaker shall be by notice served on the undertaker by the owner or occupier of the premises.
- (2) An application under this section with respect to a proposed discharge of any such effluent shall state—
  - (a) the nature or composition of the trade effluent;
  - (b) the maximum quantity of the trade effluent which it is proposed to discharge on any one day; and
  - (c) the highest rate at which it is proposed to discharge the trade effluent.

### **120 Applications for the discharge of special category effluent.**

- (1) Subject to subsection (3) below, where a notice containing an application under section 119 above is served on a sewerage undertaker with respect to discharges of any special category effluent, it shall be the duty of the undertaker to refer to [<sup>F1</sup>the Environment Agency] the questions—
  - (a) whether the discharges to which the notice relates should be prohibited; and
  - (b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are made.
- (2) Subject to subsection (3) below, a reference which is required to be made by a sewerage undertaker by virtue of subsection (1) above shall be made before the end of the period of two months beginning with the day after the notice containing the application is served on the undertaker.
- (3) There shall be no obligation on a sewerage undertaker to make a reference under this section in respect of any application if, before the end of the period mentioned in

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- subsection (2) above, there is a refusal by the undertaker to give any consent on the application.
- (4) It shall be the duty of a sewerage undertaker where it has made a reference under this section not to give any consent, or enter into any agreement, with respect to the discharges to which the reference relates at any time before [<sup>F2</sup>the Environment Agency] serves notice on the undertaker of his determination on the reference.
- (5) Every reference under this section shall be made in writing and shall be accompanied by a copy of the notice containing the application in respect of which it is made.
- (6) It shall be the duty of a sewerage undertaker, on making a reference under this section, to serve a copy of the reference on the owner or the occupier of the trade premises in question, according to whether the discharges to which the reference relates are to be by the owner or by the occupier.
- <sup>F3</sup>[(9) If a sewerage undertaker fails, within the period provided by subsection (2) above, to refer to the Environment Agency any question which he is required by subsection (1) above to refer to the Agency, the undertaker shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (10) If the Environment Agency becomes aware of any such failure as is mentioned in subsection (9) above, the Agency may—
- (a) if a consent under this Chapter to make discharges of any special category effluent has been granted on the application in question, exercise its powers of review under section 127 or 131 below, notwithstanding anything in subsection (2) of the section in question; or
  - (b) in any other case, proceed as if the reference required by this section had been made.]

#### Textual Amendments

- F1** Words in s. 120(1) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 105(1)(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F2** Words in s. 120(4) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 105(1)(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F3** S. 120(9)(10) substituted (1.4.1996) for s. 120(7)(8) by 1995 c. 25, s. 120(1), **Sch. 22 para. 105(1)(4)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

## 121 Conditions of consent.

- (1) The power of a sewerage undertaker, on an application under section 119 above, to give a consent with respect to the discharge of any trade effluent shall be a power to give a consent either unconditionally or subject to such conditions as the sewerage undertaker thinks fit to impose with respect to—
- (a) the sewer or sewers into which the trade effluent may be discharged;
  - (b) the nature or composition of the trade effluent which may be discharged;
  - (c) the maximum quantity of trade effluent which may be discharged on any one day, either generally or into a particular sewer; and
  - (d) the highest rate at which trade effluent may be discharged, either generally or into a particular sewer.

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- (2) Conditions with respect to all or any of the following matters may also be attached under this section to a consent to the discharge of trade effluent from any trade premises—
- (a) the period or periods of the day during which the trade effluent may be discharged from the trade premises into the sewer;
  - (b) the exclusion from the trade effluent of all condensing water;
  - (c) the elimination or diminution, in cases falling within subsection (3) below, of any specified constituent of the trade effluent, before it enters the sewer;
  - (d) the temperature of the trade effluent at the time when it is discharged into the sewer, and its acidity or alkalinity at that time;
  - (e) the payment by the occupier of the trade premises to the undertaker of charges for the reception of the trade effluent into the sewer and for the disposal of the effluent;
  - (f) the provision and maintenance of such an inspection chamber or manhole as will enable a person readily to take samples, at any time, of what is passing into the sewer from the trade premises;
  - (g) the provision, testing and maintenance of such meters as may be required to measure the volume and rate of discharge of any trade effluent being discharged from the trade premises into the sewer;
  - (h) the provision, testing and maintenance of apparatus for determining the nature and composition of any trade effluent being discharged from the premises into the sewer;
  - (i) the keeping of records of the volume, rate of discharge, nature and composition of any trade effluent being discharged and, in particular, the keeping of records of readings of meters and other recording apparatus provided in compliance with any other condition attached to the consent; and
  - (j) the making of returns and giving of other information to the sewerage undertaker concerning the volume, rate of discharge, nature and composition of any trade effluent discharged from the trade premises into the sewer.
- (3) A case falls within this subsection where the sewerage undertaker is satisfied that the constituent in question, either alone or in combination with any matter with which it is likely to come into contact while passing through any sewers—
- (a) would injure or obstruct those sewers, or make the treatment or disposal of the sewage from those sewers specially difficult or expensive; or
  - (b) in the case of trade effluent which is to be or is discharged—
    - (i) into a sewer having an outfall in any harbour or tidal water; or
    - (ii) into a sewer which connects directly or indirectly with a sewer or sewage disposal works having such an outfall,
 would cause or tend to cause injury or obstruction to the navigation on, or the use of, the harbour or tidal water.
- (4) In the exercise of the power conferred by virtue of subsection (2)(e) above, regard shall be had—
- (a) to the nature and composition and to the volume and rate of discharge of the trade effluent discharged;
  - (b) to any additional expense incurred or likely to be incurred by a sewerage undertaker in connection with the reception or disposal of the trade effluent; and
  - (c) to any revenue likely to be derived by the undertaker from the trade effluent.

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- (5) If, in the case of any trade premises, a condition imposed under this section is contravened, the occupier of the premises shall be guilty of an offence and liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to a fine.
- (6) In this section “harbour” and “tidal water” have the same meanings as in the [F4Merchant Shipping Act 1995].
- (7) This section has effect subject to the provisions of sections 133 and 135(3) below.

#### Textual Amendments

- F4** Words in s. 121(6) substituted (1.1.1996) by 1995 c. 21, ss. 314(2), 316(2), Sch. 13 para. 89(a) (with s. 312(1))

## 122 Appeals to the Director with respect to decisions on applications etc.

- (1) Any person aggrieved by—
  - (a) the refusal of a sewerage undertaker to give a consent for which application has been duly made to the undertaker under section 119 above;
  - (b) the failure of a sewerage undertaker to give such a consent within the period of two months beginning with the day after service of the notice containing the application; or
  - (c) any condition attached by a sewerage undertaker to such a consent, may appeal to the Director.
- (2) On an appeal under this section in respect of a refusal or failure to give a consent, the Director may give the necessary consent, either unconditionally or subject to such conditions as he thinks fit to impose for determining any of the matters as respects which the undertaker has power to impose conditions under section 121 above.
- (3) On an appeal under this section in respect of a condition attached to a consent, the Director may take into review all the conditions attached to the consent, whether appealed against or not, and may—
  - (a) substitute for them any other set of conditions, whether more or less favourable to the appellant; or
  - (b) annul any of the conditions.
- (4) The Director may, under subsection (3) above, include provision as to the charges to be made in pursuance of any condition attached to a consent for any period before the determination of the appeal.
- (5) On any appeal under this section, the Director may give a direction that the trade effluent in question shall not be discharged until a specified date.
- (6) Any consent given or conditions imposed by the Director under this section in respect of discharges of trade effluent shall have effect for the purposes of this Chapter as if given or imposed by the sewerage undertaker in question.
- (7) The powers of the Director under this section shall be subject to the provisions of sections 123, 128, 133, 135 and 137 below.

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### 123 Appeals with respect to the discharge of special category effluent.

- (1) Where a reference is made to [<sup>F5</sup>the Environment Agency] under section 120 above, the period mentioned in paragraph (b) of subsection (1) of section 122 above shall not begin to run for the purposes of that subsection, in relation to the application to which the reference relates, until the beginning of the day after [<sup>F5</sup>the Environment Agency] serves notice on the sewerage undertaker in question of his determination on the reference.
- (2) If, on an appeal under section 122 above, it appears to the Director—
  - (a) that the case is one in which the sewerage undertaker in question is required to make a reference under section 120 above before giving a consent; and
  - (b) that the undertaker has not made such a reference, whether because the case falls within subsection (3) of that section or otherwise,
 the Director shall not be entitled to determine the appeal, otherwise than by upholding a refusal, except where the conditions set out in subsection (3) below are satisfied.
- (3) The conditions mentioned in subsection (2) above are satisfied if the Director—
  - (a) has himself referred the questions mentioned in section 120(1) above to [<sup>F5</sup>the Environment Agency]; and
  - (b) has been sent a copy of the notice of [<sup>F5</sup>the Environment Agency's] determination on the reference.
- (4) Every reference under this section shall be made in writing and shall be accompanied by a copy of the notice containing the application in respect of which the appeal and reference is made.
- (5) It shall be the duty of the Director, on making a reference under this section, to serve a copy of the reference—
  - (a) on the owner or the occupier of the trade premises in question, according to whether the discharges to which the reference relates are to be by the owner or by the occupier; and
  - (b) on the sewerage undertaker in question.

#### Textual Amendments

- F5** Words in s. 123(1)(3)(a)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 106** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### 124 Variation of consents.

- (1) Subject to sections 128, 133 and 135(3) below, a sewerage undertaker may from time to time give a direction varying the conditions which have been attached to any of its consents under this Chapter to the discharge of trade effluent into a public sewer.
- (2) Subject to subsections (3) and (4) and section 125 below, no direction shall be given under this section with respect to a consent under this Chapter—
  - (a) within two years from the date of the consent; or
  - (b) where a previous direction has been given under this section with respect to that consent, within two years from the date on which notice was given of that direction.

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- (3) Subsection (2) above shall not prevent a direction being given before the time specified in that subsection if it is given with the consent of the owner and occupier of the trade premises in question.
- (4) A direction given with the consent mentioned in subsection (3) above shall not affect the time at which any subsequent direction may be given.
- (5) The sewerage undertaker shall give to the owner and occupier of the trade premises to which a consent under this Chapter relates notice of any direction under this section with respect to that consent.
- (6) A notice under subsection (5) above shall—
  - (a) include information as to the right of appeal conferred by subsection (1) of section 126 below; and
  - (b) state the date, being a date not less than two months after the giving of the notice, on which (subject to subsection (2) of that section) the direction is to take effect.
- (7) For the purposes of this section references to the variation of conditions include references to the addition or annulment of a condition and to the attachment of a condition to a consent to which no condition was previously attached.

## **125 Variations within time limit.**

- (1) A sewerage undertaker may give a direction under section 124 above before the time specified in subsection (2) of that section and without the consent required by subsection (3) of that section if it considers it necessary to do so in order to provide proper protection for persons likely to be affected by the discharges which could lawfully be made apart from the direction.
- (2) Subject to section 134(3) below, where a sewerage undertaker gives a direction by virtue of subsection (1) above, the undertaker shall be liable to pay compensation to the owner and occupier of the trade premises to which the direction relates, unless the undertaker is of the opinion that the direction is required—
  - (a) in consequence of a change of circumstances which—
    - (i) has occurred since the beginning of the period of two years in question; and
    - (ii) could not reasonably have been foreseen at the beginning of that period;
  - and
  - (b) otherwise than in consequence of consents for discharges given after the beginning of that period.
- (3) Where a sewerage undertaker gives a direction by virtue of subsection (1) above and is of the opinion mentioned in subsection (2) above, it shall be the duty of the undertaker to give notice of the reasons for its opinion to the owner and occupier of the premises in question.
- (4) For the purposes of this section the circumstances referred to in subsection (2)(a) above may include the information available as to the discharges to which the consent in question relates or as to the interaction of those discharges with other discharges or matter.

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- (5) The Secretary of State may by regulations make provision as to the manner of determining the amount of any compensation payable under this section, including the factors to be taken into account in determining that amount.

## **126 Appeals with respect to variations of consent.**

- (1) The owner or occupier of any trade premises may—
- (a) within two months of the giving to him under subsection (5) of section 124 above of a notice of a direction under that section; or
  - (b) with the written permission of the Director, at any later time, appeal to the Director against the direction.
- (2) Subject to subsection (3) below, if an appeal against a direction is brought under subsection (1) above before the date specified under section 124(6)(b) above in the notice of the direction, the direction shall not take effect until the appeal is withdrawn or finally disposed of.
- (3) In so far as the direction which is the subject of an appeal relates to the making of charges payable by the occupier of any trade premises, it may take effect on any date after the giving of the notice.
- (4) On an appeal under subsection (1) above with respect to a direction, the Director shall have power—
- (a) to annul the direction given by the sewerage undertaker; and
  - (b) to substitute for it any other direction, whether more or less favourable to the appellant;
- and any direction given by the Director may include provision as to the charges to be made for any period between the giving of the notice by the sewerage undertaker and the determination of the appeal.
- (5) A person to whom notice is given in pursuance of section 125(3) above may, in accordance with regulations made by the Secretary of State, appeal to the Director against the notice on the ground that compensation should be paid in consequence of the direction to which the notice relates.
- (6) On an appeal under subsection (5) above the Director may direct that section 125 above shall have effect as if the sewerage undertaker in question were not of the opinion to which the notice relates.
- (7) Any consent given or conditions imposed by the Director under this section in respect of discharges of trade effluent shall have effect for the purposes of this Chapter as if given or imposed by the sewerage undertaker in question.
- (8) The powers of the Director under this section shall be subject to the provisions of sections 133, 135 and 137 below.

## **127 Review by the [<sup>F6</sup>the Environment Agency] of consents relating to special category effluent.**

- (1) Where any person, as the owner or occupier of any trade premises, is (whether or not in accordance with a notice under section 132 below) for the time being authorised by virtue of a consent under this Chapter to make discharges of any special



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category effluent from those premises into a sewerage undertaker's public sewer, [<sup>F6</sup>the Environment Agency] may review the questions—

- (a) whether the discharges authorised by the consent should be prohibited; and
- (b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are made.

(2) Subject to subsection (3) below, [<sup>F6</sup>the Environment Agency] shall not review any question under this section unless—

- (a) the consent or variation by virtue of which the discharges in question are made has not previously been the subject-matter of a review and was given or made—
  - (i) before 1st September 1989; or
  - (ii) in contravention of section 133 below;
- (b) a period of more than two years has elapsed since the time, or last time, when notice of [<sup>F6</sup>the Environment Agency's] determination on any reference or review relating to that consent or the consent to which that variation relates was served under section 132 below on the owner or occupier of the trade premises in question; or
- (c) there has, since the time, or last time, when such a notice was so served, been a contravention of any provision which was included in compliance with a requirement of a notice under section 132 below in the consent or variation by virtue of which the discharges in question are made.

(3) Subsection (2) above shall not apply if the review is carried out—

- (a) for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to any [<sup>F7</sup>EU] obligation or to any international agreement to which the United Kingdom is for the time being a party; or
- (b) for the protection of public health or of flora and fauna dependent on an aquatic environment.

#### Textual Amendments

- F6** Words in s. 127 substituted (1.4.1996) by 1995 c. 25, ss. 120(1), **Sch. 22 para. 107** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F7** 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))

#### *Application for variation of time for discharge*

### **128 Application for variation of time for discharge.**

(1) If, after a direction has been given under any of the preceding provisions of this Chapter requiring that trade effluent shall not be discharged until a specified date, it appears to the sewerage undertaker in question that in consequence—

- (a) of a failure to complete any works required in connection with the reception and disposal of the trade effluent; or
- (b) of any other exceptional circumstances,

a later date ought to be substituted for the date so specified in the direction, the undertaker may apply to the Director for such a substitution.

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- (2) The Director shall have power, on an application under subsection (1) above, to vary the direction so as to extend the period during which the trade effluent may not be discharged until the date specified in the application or, if he thinks fit, any earlier date.
- (3) Not less than one month before making an application under subsection (1) above a sewerage undertaker shall give notice of its intention to the owner and occupier of the trade premises from which the trade effluent is to be discharged.
- (4) The Director, before varying a direction on an application under subsection (1) above, shall take into account any representations made to him by the owner or occupier of the trade premises in question.

*Agreements with respect the disposal etc. of trade effluent*

**129 Agreements with respect to the disposal etc of trade effluent.**

- (1) Subject to sections 130 and 133 below, a sewerage undertaker may enter into and carry into effect—
  - (a) an agreement with the owner or occupier of any trade premises within its area for the reception and disposal by the undertaker of any trade effluent produced on those premises;
  - (b) an agreement with the owner or occupier of any such premises under which it undertakes, on such terms as may be specified in the agreement, to remove and dispose of substances produced in the course of treating any trade effluent on or in connection with those premises.
- (2) Without prejudice to the generality of subsection (1) above, an agreement such as is mentioned in paragraph (a) of that subsection may, in particular, provide—
  - (a) for the construction or extension by the sewerage undertaker of such works as may be required for the reception or disposal of the trade effluent; and
  - (b) for the repayment by the owner or occupier, as the case may be, of the whole or part of the expenses incurred by the undertaker in carrying out its obligations under the agreement.
- (3) It is hereby declared that the power of a sewerage undertaker to enter into an agreement under this section includes a power, by that agreement, to authorise such a discharge as apart from the agreement would require a consent under this Chapter.

**130 Reference to [<sup>F8</sup>the Environment Agency] of agreements relating to special category effluent.**

- (1) Where a sewerage undertaker and the owner or occupier of any trade premises are proposing to enter into an agreement under section 129 above with respect to, or to any matter connected with, the reception or disposal of any special category effluent, it shall be the duty of the undertaker to refer to [<sup>F8</sup>the Environment Agency] the questions—
  - (a) whether the operations which would, for the purposes of or in connection with the reception or disposal of that effluent, be carried out in pursuance of the proposed agreement should be prohibited; and
  - (b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are carried out.

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- (2) It shall be the duty of a sewerage undertaker where it has made a reference under this section not to give any consent or enter into any agreement with respect to any such operations as are mentioned in subsection (1)(a) above at any time before [<sup>F8</sup>the Environment Agency] serves notice on the undertaker of his determination on the reference.
- (3) Every reference under this section shall be made in writing and shall be accompanied by a copy of the proposed agreement.
- (4) It shall be the duty of a sewerage undertaker, on making a reference under this section, to serve a copy of the reference on the owner or the occupier of the trade premises in question, according to whether it is the owner or occupier who is proposing to be a party to the agreement.
- <sup>F9</sup>(7) If a sewerage undertaker fails, before giving any consent or entering into any agreement with respect to any such operations as are mentioned in paragraph (a) of subsection (1) above, to refer to the Environment Agency any question which he is required by that subsection to refer to the Agency, the undertaker shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (8) If the Environment Agency becomes aware—
- (a) that a sewerage undertaker and the owner or occupier of any trade premises are proposing to enter into any such agreement as is mentioned in subsection (1) above, and
  - (b) that the sewerage undertaker has not referred to the Agency any question which it is required to refer to the Agency by that subsection,
- the Agency may proceed as if the reference required by that subsection had been made.
- (9) If the Environment Agency becomes aware that any consent has been given or agreement entered into with respect to any such operations as are mentioned in paragraph (a) of subsection (1) above without the sewerage undertaker in question having referred to the Environment Agency any question which he is required by that subsection to refer to the Agency, the Agency may exercise its powers of review under section 127 above or, as the case may be, section 131 below, notwithstanding anything in subsection (2) of the section in question.]

#### Textual Amendments

- F8** Words in s. 130(1)(2) and sidenote substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 108(1)(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F9** S. 130(7)-(9) substituted (1.4.1996) for s. 130(5)(6) by 1995 c. 25, s. 120(1), **Sch. 22 para. 108(1)(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### 131 Review by [<sup>F10</sup>the Environment Agency] of agreements relating to special category effluent.

- (1) Where any person, as the owner or occupier of any trade premises, is (whether or not in accordance with a notice under section 132 below) for the time being a party to any agreement under section 129 above with respect to, or to any matter connected with,

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the reception or disposal of special category effluent, [F10the Environment Agency] may review the questions—

- (a) whether the operations which, for the purposes of or in connection with the reception or disposal of that effluent, are carried out in pursuance of the agreement should be prohibited; and
  - (b) whether, if they are not prohibited, any requirements should be imposed as to the conditions on which they are carried out.
- (2) Subject to subsection (3) below, [F10the Environment Agency] shall not review any question under this section unless—
- (a) the agreement by virtue of which the operations in question are carried out has not previously been the subject-matter of a review and was entered into—
    - (i) before 1st September 1989; or
    - (ii) in contravention of section 133 below;
  - (b) a period of more than two years has elapsed since the time, or last time, when notice of [F10the Environment Agency's] determination on any reference or review relating to that agreement was served under section 132 below on the owner or occupier of the trade premises in question; or
  - (c) there has, since the time, or last time, when such a notice was so served, been a contravention of any provision which was included in compliance with a requirement of a notice under section 132 below in the agreement by virtue of which the operations in question are carried out.
- (3) Subsection (2) above shall not apply if the review is carried out—
- (a) for the purpose of enabling Her Majesty's Government in the United Kingdom to give effect to any [F7EU] obligation or to any international agreement to which the United Kingdom is for the time being a party; or
  - (b) for the protection of public health or of flora and fauna dependent on an aquatic environment.
- (4) References in this section to an agreement include references to an agreement as varied from time to time by a notice under section 132 below.

#### **Textual Amendments**

- F7** 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))
- F10** Words in s. 131 substituted (1.4.1996) by 1995 c. 25, s. 120(1), [Sch. 22 para. 109](#) (with ss. 7(6), 115, 117); S.I. 1996/186, [art. 3](#)

#### *References and reviews relating to special category effluent*

### **132 Powers and procedure on references and reviews.**

- (1) This section applies to—
- (a) any reference to [F11the Environment Agency] under section 120, 123 or 130 above; and
  - (b) any review by [F11the Environment Agency] under section 127 or 131 above.

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- (2) On a reference or review to which this section applies, it shall be the duty of [<sup>F11</sup>the Environment Agency], before determining the questions which are the subject-matter of the reference or review—
  - (a) to give an opportunity of making representations or objections to [<sup>F11</sup>the Environment Agency]—
    - (i) to the sewerage undertaker in question; and
    - (ii) to the following person, that is to say, the owner or the occupier of the trade premises in question, according to whether it is the owner or the occupier of those premises who is proposing to be, or is, the person making the discharges or, as the case may be, a party to the agreement;
  - and
  - (b) to consider any representations or objections which are duly made to [<sup>F12</sup>the Agency] with respect to those questions by a person to whom [<sup>F12</sup>the Agency] is required to give such an opportunity and which are not withdrawn.
- (3) On determining any question on a reference or review to which this section applies, [<sup>F11</sup>the Environment Agency] shall serve notice on the sewerage undertaker in question and on the person specified in subsection (2)(a)(ii) above.
- (4) A notice under this section shall state, according to what has been determined-
  - (a) that the discharges or operations to which, or to the proposals for which, the reference or review relates, or such of them as are specified in the notice, are to be prohibited; or
  - (b) that those discharges or operations, or such of them as are so specified, are to be prohibited except in so far as they are made or carried out in accordance with conditions which consist in or include conditions so specified; or
  - (c) that [<sup>F11</sup>the Environment Agency] has no objection to those discharges or operations and does not intend to impose any requirements as to the conditions on which they are made or carried out.
- (5) Without prejudice to section 133 below, a notice under this section, in addition to containing such provision as is specified in sub-paragraph (4) above, may do one or both of the following, that is to say—
  - (a) vary or revoke the provisions of a previous notice with respect to the discharges or operations in question; and
  - (b) for the purpose of giving effect to any prohibition or other requirement contained in the notice, vary or revoke any consent under this Chapter or any agreement under section 129 above.
- (6) Nothing in subsection (1) or (2) of section 121 above shall be construed as restricting the power of [<sup>F11</sup>the Environment Agency], by virtue of subsection (4)(b) above, to specify such conditions as [<sup>F13</sup>the Agency] considers appropriate in a notice under this section.
- <sup>F14</sup>(7) .....
- (8) [<sup>F11</sup>the Environment Agency] shall send a copy of every notice served under this section to the Director.

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#### Textual Amendments

- F11** Words in s. 132(1)(a)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 110(1)(2)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F12** Words in s. 132(2)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 110(1)(3)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F13** Words in s. 132(6) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 110(1)(4)** (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F14** S. 132(7) repealed (1.4.1996) by 1995 c. 25, s. 120(1)(3), Sch. 22 para. 110(1)(5), **Sch. 24** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

### 133 Effect of determination on reference or review.

- (1) Where a notice under section 132 above has been served on a sewerage undertaker, it shall be the duty—
- (a) of the undertaker; and
  - (b) in relation to that undertaker, of the Director,
- so to exercise the powers to which this section applies as to secure compliance with the provisions of the notice.
- (2) This paragraph applies to the following powers, that is to say—
- (a) in relation to a sewerage undertaker, its power to give a consent under this Chapter, any of its powers under section 121 or 124 above and any power to enter into or vary an agreement under section 129 above; and
  - (b) in relation to the Director, any of his powers under this Chapter.
- (3) Nothing in subsection (1) or (2) of section 121 above shall be construed as restricting the power of a sewerage undertaker, for the purpose of complying with this section, to impose any condition specified in a notice under section 132 above.
- <sup>F15</sup>(5) A sewerage undertaker which fails to perform its duty under subsection (1) above shall be guilty of an offence and liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum;
  - (b) on conviction on indictment, to a fine.
- (6) The Environment Agency may, for the purpose of securing compliance with the provisions of a notice under section 132 above, by serving notice on the sewerage undertaker in question and on the person specified in section 132(2)(a)(ii) above, vary or revoke—
- (a) any consent given under this Chapter to make discharges of any special category effluent, or
  - (b) any agreement under section 129 above.]

#### Textual Amendments

- F15** S. 133(5)(6) substituted (1.4.1996) for s. 133(4) by 1995 c. 25, s. 120(1), **Sch. 22 para. 111** (with s. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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### **134 Compensation in respect of determinations made for the protection of public health etc.**

- (1) Subject to subsection (2) below, [<sup>F16</sup>the Environment Agency] shall be liable to pay compensation to the relevant person in respect of any loss or damage sustained by that person as a result of any notice under section 132 above containing [<sup>F16</sup>the Environment Agency’s] determination on a review which—
  - (a) has been carried out for the protection of public health or of flora and fauna dependent on an aquatic environment; and
  - (b) but for being so carried out would have been prohibited by virtue of section 127(2) or 131(2) above.
- (2) [<sup>F16</sup>the Environment Agency] shall not be required to pay any compensation under this section if the determination in question is shown to have been given in consequence of—
  - (a) a change of circumstances which could not reasonably have been foreseen at the time when the period of two years mentioned in section 127(2) or, as the case may be, section 131(2) above began to run; or
  - (b) consideration by [<sup>F16</sup>the Environment Agency] of material information which was not reasonably available to [<sup>F17</sup>the Agency] at that time.
- (3) No person shall be entitled to any compensation under section 125 above in respect of anything done in pursuance of section 133 above.
- (4) In this section “the relevant person”, in relation to a review, means the owner or the occupier of the trade premises in question, according to whether it is the owner or the occupier who makes the discharges to which the review relates or, as the case may be, is a party to the agreement to which it relates.

#### **Textual Amendments**

- F16** Words in s. 134(1)(2)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 112(a)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F17** Words in s. 134(2)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 112(b)** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

#### *Supplemental provisions of Chapter III*

### **135 Restrictions on power to fix charges under Chapter III.**

- (1) On any appeal under section 122 or 126(1) above conditions providing for the payment of charges to the sewerage undertaker in question shall not be determined by the Director except in so far as no provision is in force by virtue of a charges scheme under section 143 below in respect of any such receptions, discharges, removals or disposals of effluent or substances as are of the same description as the reception, discharge, removal or disposal which is the subject-matter of the appeal.
- (2) In so far as any such conditions as are mentioned in subsection (1) above do fall to be determined by the Director, they shall be determined having regard to the desirability of that undertaker’s—
  - (a) recovering the expenses of complying with its obligations in consequence of the consent or agreement to which the conditions relate; and



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- (b) securing a reasonable return on its capital.
- (3) To the extent that subsection (1) above excludes any charges from a determination on an appeal those charges shall be fixed from time to time by a charges scheme under section 143 below but not otherwise.

**[135A <sup>F18</sup>Power of the Environment Agency to acquire information for the purpose of its functions in relation to special category effluent.**

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

**Textual Amendments**

**F18** S. 135A inserted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 113** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

**136 Evidence from meters etc.**

Any meter or apparatus provided in pursuance of this Chapter in any trade premises for the purpose of measuring, recording or determining the volume, rate of discharge, nature or composition of any trade effluent discharged from those premises shall be presumed in any proceedings to register accurately, unless the contrary is shown.

**137 Statement of case on appeal.**

- (1) At any stage of the proceedings on an appeal under section 122 or 126(1) above, the Director may, and if so directed by the High Court shall, state in the form of a special case for the decision of the High Court any question of law arising in those proceedings.
- (2) The decision of the High Court on a special case under this section shall be deemed to be a judgment of the Court within the meaning of section 16 of the [<sup>F19</sup>Senior Courts Act 1981](which relates to the jurisdiction of the Court of Appeal); but no appeal to



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the Court of Appeal shall be brought by virtue of this subsection except with the leave of the High Court or of the Court of Appeal.

#### Textual Amendments

**F19** Words in s. 137(2) substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\), ss. 59, 148\(1\), Sch. 11 para. 1\(2\); S.I. 2009/1604, art. 2\(d\)](#)

### 138 Meaning of “special category effluent”.

(1) Subject to <sup>F20</sup>subsections (1A) and] (2) below, trade effluent shall be special category effluent for the purposes of this Chapter if—

- (a) such substances as may be prescribed under this Act are present in the effluent or are present in the effluent in prescribed concentrations; or
- (b) the effluent derives from any such process as may be so prescribed or from a process involving the use of prescribed substances or the use of such substances in quantities which exceed the prescribed amounts.

<sup>F21</sup>(1A) If trade effluent is produced, or to be produced, by operating <sup>F22</sup>any Part A installation or Part A mobile plant or otherwise carrying on any Part A activity] , the operation or carrying on of which requires a permit, that effluent shall not be special category effluent for the purposes of this Chapter as from the determination date relating to the installation, plant or activity in question.

(1B) In subsection (1A)—

- (a) “determination date”, in relation to an installation, plant or activity, means—
  - (i) in the case of an installation, plant or activity in relation to which a permit is granted, the date on which it is granted, whether in pursuance of the application, or on an appeal, of a direction to grant it;
  - (ii) in the case of an installation, plant or activity in relation to which the grant of a permit is refused, the date of refusal or, on appeal, of the affirmation of the refusal,

and in this paragraph the references to an appeal are references to an appeal under <sup>F23</sup>the Environmental Permitting (England and Wales) Regulations 2010];

<sup>F24</sup>(aa) [ the expressions “Part A activity”, “Part A installation” and “Part A mobile plant” have the same meaning as in <sup>F25</sup>those Regulations];]

- (b) “permit” means a permit <sup>F26</sup>granted under <sup>F27</sup>those Regulations]].]

(2) Trade effluent shall not be special category effluent for the purposes of this Chapter if it is produced, or to be produced, in any process which is a prescribed process designated for central control as from the date which is the determination date for that process.

(3) In subsection (2) above “determination date”, in relation to a prescribed process, means—

- (a) in the case of a process for which authorisation is granted, the date on which the enforcing authority grants it, whether in pursuance of the application or, on an appeal, of a direction to grant it;
- (b) in the case of a process for which authorisation is refused, the date of refusal or, on appeal, of the affirmation of the refusal.

(4) <sup>F28</sup>In subsection (2) and (3) above]—

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- (a) “authorisation”, “enforcing authority” and “prescribed process” have the meanings given by section 1 of the <sup>M1</sup>Environmental Protection Act 1990; and
  - (b) the references to designation for central control and to an appeal are references, respectively, to designation under section 4 of that Act and to an appeal under section 15 of that Act.
- (5) Without prejudice to the power in subsection (3) of section 139 below, nothing in this Chapter shall enable regulations under this section to prescribe as special category effluent any liquid or matter which is not trade effluent but falls to be treated as such for the purposes of this Chapter by virtue of an order under that section.

#### Textual Amendments

- F20** Words in s. 138(1) substituted (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 8(a)**
- F21** S. 138(1A)(1B) inserted (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 8(b)**
- F22** Words in s. 138(1A) substituted (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 20(2)**
- F23** Words in s. 138(1B)(a) substituted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 7(a)** (with reg. 1(2), Sch. 4)
- F24** S. 138(1B)(aa) inserted (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 20(4)**
- F25** Words in s. 138(1B)(aa) substituted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 7(b)** (with reg. 1(2), Sch. 4)
- F26** Words in s. 138(1B)(b) substituted (6.4.2008) by The Environmental Permitting (England and Wales) Regulations 2007 (S.I. 2007/3538), reg. 73, **Sch. 21 para. 20(5)**
- F27** Words in s. 138(1B)(b) substituted (6.4.2010) by The Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010/675), reg. 1(1)(b), **Sch. 26 para. 7(b)** (with reg. 1(2), Sch. 4)
- F28** Words in s. 138(4) substituted (1.8.2000) by S.I. 2000/1973, reg. 39, **Sch. 10 para. 8(c)**

#### Marginal Citations

- M1** 1990 c. 43.

### 139 Power to apply Chapter III to other effluents.

- (1) The Secretary of State may by order provide that, subject to section 138(5) above, this Chapter shall apply in relation to liquid or other matter of any description specified in the order which is discharged into public sewers as it applies in relation to trade effluent.
- (2) An order applying the provisions of this Chapter in relation to liquid or other matter of any description may provide for it to so apply subject to such modifications (if any) as may be specified in the order and, in particular, subject to any such modification of the meaning for the purposes of this Chapter of the expression “trade premises” as may be so specified.
- (3) The Secretary of State may include in an order under this section such provisions as appear to him expedient for modifying any enactment relating to sewage as that enactment applies in relation to the discharge into sewers of any liquid or other matter to which any provisions of this Chapter are applied by an order under this section.
- (4) The Secretary of State may include in an order under this section such other supplemental, incidental and transitional provision as appears to him to be expedient.

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- (5) The power to make an order under this section shall be exercisable by statutory instrument; and no order shall be made under this section unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

#### **140 Pre-1989 Act authority for trade effluent discharges etc.**

Schedule 8 to this Act shall have effect (without prejudice to the provisions of the <sup>M2</sup>Water Consolidation (Consequential Provisions) Act 1991 or to sections 16 and 17 of the <sup>M3</sup>Interpretation Act 1978) for the purpose of making provision in respect of certain cases where trade effluent was discharged in accordance with provision made before the coming into force of the <sup>M4</sup>Water Act 1989.

#### **Marginal Citations**

- M2** 1991 c. 60.  
**M3** 1978 c. 30.  
**M4** 1989 c. 15.

### *Interpretation of Chapter III*

#### **141 Interpretation of Chapter III.**

- (1) In this Chapter, except in so far as the context otherwise requires—  
“special category effluent” has the meaning given by section 138 above;  
“trade effluent”—  
(a) means any liquid, either with or without particles of matter in suspension in the liquid, which is wholly or partly produced in the course of any trade or industry carried on at trade premises; and  
(b) in relation to any trade premises, means any such liquid which is so produced in the course of any trade or industry carried on at those premises,  
but does not include domestic sewage;  
“trade premises” means, subject to subsection (2) below, any premises used or intended to be used for carrying on any trade or industry.
- (2) For the purposes of this Chapter any land or premises used or intended for use (in whole or in part and whether or not for profit)—  
(a) for agricultural or horticultural purposes or for the purposes of fish farming; or  
(b) for scientific research or experiment,  
shall be deemed to be premises used for carrying on a trade or industry; and the references to a trade or industry in the definition of “trade effluent” in subsection (1) above shall include references to agriculture, horticulture, fish farming and scientific research or experiment.
- (3) Every application or consent made or given under this Chapter shall be made or given in writing.
- (4) Nothing in this Chapter shall affect any right with respect to water in a river stream or watercourse, or authorise any infringement of such a right, except in so far as any

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such right would dispense with the requirements of this Chapter so far as they have effect by virtue of any regulations under section 138 above.

**Status:**

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